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101st Congress
1st Session

SENATE

Report
101-126

VETERANS BENEFITS AND HEALTH CARE ACT OF 1989

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 13

together with

ADDITIONAL VIEWS

September 13 (legislative day, September 6), 1989.—Ordered to be printed

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Report
101-126

VETERANS BENEFITS AND HEALTH CARE ACT OF 1989

September 13 (legislative day, September 6), 1989.—Ordered to be printed

Mr. Cranston, from the Committee on Veterans' Affairs,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 13]

The Committee on Veterans' Affairs, to which was referred the bill (S. 13) to amend title 38, United States Code, to increase the rates of disability compensation and dependency and indemnity compensation for veterans and survivors, to increase the allowances paid to disabled veterans pursuing rehabilitation programs and to the dependents and survivors of certain disabled veterans pursuing programs of education, and to improve various programs of benefits and health-care services for veterans; and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute, and recommends that the bill, as amended, do pass.

Committee Amendment

The amendment is as follows:

Strike out all after the enacting clause as follows:

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Veterans Benefits and Health Care Act of 1989".

[SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

[Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

[TITLE I—COMPENSATION AND OTHER BENEFITS

[PART A—COST-OF-LIVING ADJUSTMENTS

[SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

[(a) IN GENERAL.—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1989, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

[(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by amendments made by title XI of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100–687), the Secretary shall further increase such rates and limitations, as in effect on November 30, 1989, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1989, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

[(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

[(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85–857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

[(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1990, the Secretary shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.

[SEC. 102. REHABILITATION SUBSISTENCE ALLOWANCES FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES.

[(a) RATE INCREASES.—The table in section 1508(b) is amended to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$353	$437	$514	$38
Three-quarter time	265	328	386	28
Half-time	176	220	258	19
Farm cooperative, apprentice, or other on-job training:				
Full-time	308	372	429	27

“Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
Extended evaluation:				
Full-time	353	437	514	38
Independent living training:				
Full-time	353	437	514	38
Three-quarter time	265	328	386	28
Half-time	176	220	258	19.”

[(b) Effective Date.—The amendment made by subsection (a) shall take effect on January 1, 1990.

[SEC. 103. EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS.

[(a) Increased Allowances.—Section 1732 is amended—

[(1) in subsection (a)—

[(A) by inserting “113.8 percent of” in paragraph (1) after “computed at”; and

[(B) by striking out “the rate prescribed in section 1682(b)(2) of this title for less-than-half-time pursuit of an institutional program by an eligible veteran” in paragraph (2) and inserting in lieu thereof “the lesser of (1) the rate determined under clause (A) of section 1682(b) of this title, or (2) 113.8 percent of the rate provided in clause (B) of such section 1682(b)”;

[(2) in subsection (b), by striking out “$304” and inserting in lieu thereof “$346”;

[(3) in subsection (c)—

[(A) by inserting “113.8 percent of” in paragraph (2) after “computed at”; and

[(B) by striking out “the rate prescribed in section 1682(e) of this title.” in paragraph (3) and inserting in lieu thereof “the lesser of (A) the rate determined under clause (A) of section 1682(b) of this title, or (B) 113.8 percent of the rate provided in clause (B) of such section 1682(b). Section 1682(e) of this title, except for the first sentence, shall apply to the educational assistance allowance computed under this paragraph.”;

[(4) in subsection (e)—

[(A) by striking out “(e) In” and inserting in lieu thereof “(e)(1) Subject to paragraph (2) of this subsection, in”; and

[(B) by adding at the end the following new paragraph:

[“(2) For the purposes of paragraph (1) of this subsection, the amount of the monthly educational assistance allowance prescribed, in subsection (a)(1) or (a)(2) of section 1682 of this title and in section 1787(b)(1) of this title, as referred to in section 1682(g) of this title, for a veteran with no dependents shall be deemed to be equal to 113.8 percent of the amount so prescribed.”; and

[(5) by adding at the end the following new subsection:

[“(f) In the computation of an educational assistance allowance under this section, any amount of 50 cents or more shall be rounded to the next higher dollar and any amount of 49 cents or less shall be rounded to the next lower dollar.”.

[(b) Effective Date.—The amendments made by subsection (a) shall take effect on January 1, 1990.

[Part B—Other Benefits Provisions

[SEC. 111. EXPANSION OF CLOTHING ALLOWANCE.

[(a) In General.—The text of section 362 is amended—

[(1) by striking out "Administrator" the first two places it appears and inserting in lieu thereof "Secretary"; and

[(2) by striking out all after "each veteran" and inserting in lieu thereof the following:

"who, because of disability which is compensable under this chapter—

["(1) wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of such veteran; or

["(2) uses medication which (A) has been prescribed for a service-connected skin condition, and (B) the Secretary determines stains or otherwise damages such veteran's clothing.".

[(b) Conforming Amendment.—Section 101 is amended by adding at the end the following new paragraph:

["(33) The term 'Secretary' means the Secretary of Veterans Affairs.".

[SEC. 112. PENSION PAYMENTS FOR HOSPITALIZED VETERANS.

[(a) Amount of Pension.—Section 3203(a)(1) is amended by striking out "$60" each place it appears in subparagraphs (A) and (C) and inserting in lieu thereof "$105".

[(b) Extension of Period for Payment of Full Pension to Hospitalized Veterans.—Section 3203(a)(1) is amended—

[(1) by striking out subparagraph (B) and inserting in lieu thereof the following:

["(B) Except as provided in subparagraphs (D) and (E) of this paragraph, where any veteran having neither spouse nor child is being furnished hospital or nursing home care by the Department of Veterans Affairs, no pension in excess of $105 per month shall be paid to or for the veteran for any period after—

["(i) in the case of a veteran being furnished hospital care, the end of the eighth calendar month following the month of admission for such care; and

["(ii) in the case of a veteran being furnished nursing home care, the end of the third calendar month following the month of admission for such care.";

[(2) in subparagraph (D), by striking out "the last day of the third month referred to in such subparagraph" and inserting in lieu thereof "the last day of the period for which the veteran's pension is not reduced under such subparagraph"; and

[(3) by adding at the end the following new subparagraph:

["(E) The Secretary may extend the period during which the pension of a veteran referred to in subparagraph (B)(i) of this paragraph is not reduced under such subparagraph if the Secretary determines that the veteran is likely to be discharged from the hospital within the period for which the extension is granted or within a reasonably short period after the expiration of such extended period. No extension may be granted under this subparagraph for a period exceeding two months. However, successive extensions may be granted. The total period of all extensions granted a veteran under this subparagraph in connection with one hospitalization may not exceed four months.".

[(c) Effective Date.—The amendments made by subsections (a) and (b) shall take effect with respect to veterans who are being furnished hospital care by the Department of Veterans Affairs on or after (1) the first day of the first month that begins after the date of the enactment of this Act, or (2) October 1, 1989, whichever is later.

[SEC. 113. LIMITED EXTENSION OF THE VETERANS' READJUSTMENT APPOINTMENT AUTHORITY.

[(a) In General.—Section 2014(b) is amended—

[(1) in paragraph (1)—

[(A) by inserting "eligible" before "veterans of the Vietnam era"; and

[(B) by striking out "a veteran of the Vietnam era" each place it appears and inserting in lieu thereof "an eligible veteran of the Vietnam era";

[(2) in paragraph (2), by striking out "1989" and inserting in lieu thereof "1991"; and

[(3) by adding at the end the following new paragraph:

["(3) In this subsection, the term 'eligible veteran of the Vietnam era' means an eligible veteran who—

["(A) is a veteran of the Vietnam era; and

["(B) either—

["(i) is a disabled veteran; or

["(ii) during such era, served on active duty in the Vietnam theater of operations, as determined under regulations prescribed by the Secretary.".

[(b) Effective Date.—The amendments made by subsection (a) shall take effect on January 1, 1990.

[PART C—PROGRAM ADMINISTRATION

[SEC. 121. EXPANSION OF MULTIYEAR PROCUREMENT AUTHORITY TO INCLUDE NON-MEDICAL ITEMS.

[(a) IN GENERAL.—Section 114 is amended—

[(1) by striking out the heading and inserting in lieu thereof the following:

[“§ 114. Multiyear procurement”;

[(2) in subsection (a), by striking out “for use in Veterans' Administration health-care facilities”;

[(3) in subsection (b)(2)(A), by striking out “health-care”; and

[(4) in subsection (e)—

[(A) by striking out paragraph (2); and

[(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

[(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 is amended by striking out the item relating to section 114 and inserting in lieu thereof the following:

[“114. Multiyear procurement.”.

[TITLE II—HEALTH CARE

[PART A—PROGRAMS RELATING TO POST-TRAUMATIC STRESS DISORDER AND MENTAL HEALTH

[SEC. 201. CARE FOR COMBAT VETERANS WITH SERVICE-RELATED POST-TRAUMATIC STRESS DISORDER.

[(a) IN GENERAL.—Section 602 is amended—

[(1) by inserting “(a)” before “For”; and

[(2) by adding at the end the following new subsections:

[“(b) Any veteran—

[“(1) who served on active duty in a theater of combat operations (as defined in regulations prescribed by the Secretary) during World War I, World War II, the Korean conflict, or the Vietnam Era or in any other area during a period in which hostilities (as defined in subsection (c) of this section) occurred in such area, and

[“(2) whom a mental health professional designated by the Chief Medical Director has diagnosed, following an examination of such veteran by such professional, to be suffering from post-traumatic stress disorder related to such service,

shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A) of this title even though such disorder has not been determined to be service-connected.

[“(c) For the purposes of subsection (b) of this section, the term ‘hostilities’ means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.”.

[(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

[“§ 602. Special provisions relating to mental illness disabilities”.

[(2) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

[“602. Special provisions relating to mental illness disabilities.”.

[SEC. 202. SPECIAL COMMITTEE ON POST-TRAUMATIC STRESS DISORDER.

[(a) EVALUATION OF STUDY OF POSTWAR PSYCHOLOGICAL PROBLEMS OF VIETNAM VETERANS.—(1) Not later than June 1, 1989, the Special Committee on Post-Traumatic Stress Disorder (hereinafter in this section referred to as the “Special Committee”) established pursuant to section 110(b)(1) of the Veterans' Health Care Act of 1984 (Public Law 98–528; 98 Stat. 2691) shall submit concurrently to the Secretary of Veterans Affairs and the Committees on Veterans' Affairs of the Senate and the House of Representatives (hereinafter in this section referred to as the “Committees”) a report setting forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983

(Public Law 98-160; 97 Stat. 994). Such report shall include the Special Committee's—

[(A) overall evaluation of the conduct, validity, and meaning of the study;

[(B) assessment of the capability of the Department of Veterans Affairs to meet the need for the diagnosis and treatment of post-traumatic stress disorder of veterans, and other psychological problems of veterans in readjusting to civilian life, as estimated in the results of such study;

[(C) evaluation of the Secretary's report on the study; and

[(D) recommendations for any further or follow-up research on the matters addressed in the study.

[(2) Not later than 30 days after receiving the Special Committee's report under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

[(b) UPDATES OF REPORTS UNDER SECTION 110(c) OF PUBLIC LAW 98-528.—(1) Not later than February 1 of each of 1991 and 1992, the Special Committee shall concurrently submit to the Secretary and the Committees a report containing information updating the reports submitted to the Secretary under section 110(e) of the Veterans' Health Care Act of 1984 (Public Law 98-528; 98 Stat. 2693), together with any additional information the Special Committee considers appropriate regarding the overall efforts of the Department of Veterans Affairs to meet the needs of veterans with post-traumatic stress disorder and other psychological problems in readjusting to civilian life.

[(2) Not later than 60 days after receiving each of the Special Committee's reports under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

[SEC. 203. STUDY OF PSYCHOLOGICAL PROBLEMS AMONG ASIAN-AMERICAN, AMERICAN-INDIAN, NATIVE-HAWAIIAN, OTHER NATIVE-AMERICAN PACIFIC ISLANDER (INCLUDING AMERICAN SAMOAN NATIVE), AND ALASKA NATIVE VIETNAM VETERANS.

[(a) STUDY REQUIREMENT.—The Secretary of Veterans Affairs shall provide for the conduct of a comprehensive study of the following matters:

[(1) The prevalence and incidence in the populations of Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific Islander (including American Samoan Native), and Alaska Native Vietnam veterans of post-traumatic stress disorder; and other psychological problems experienced by such veterans in readjusting to civilian life.

[(2) The effects of such disorder and such problems on such veterans.

The Secretary shall provide for particular attention to be devoted in the conduct of the study to veterans who have service-connected disabilities and to women veterans.

[(b) REPORT.—Not later than October 1, 1991, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the results of the study required by subsection (a).

[(c) DEFINITIONS.—In this section:

[(1) The terms "veteran", "service-connected", and "Vietnam veteran" shall have the same meanings given those terms in section 102(c) of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 38 U.S.C. 612A note).

[(2) The term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

[(3) The term "Native Hawaiian" has the meaning given that term in section 813(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992c(3)).

[SEC. 204. FUNDING FOR POST-TRAUMATIC STRESS DISORDER PROGRAMS.

[In the documents providing detailed information on the budget for the Department of Veterans Affairs that the Secretary of Veterans Affairs submits to the Congress in conjunction with the President's budget submission for each fiscal year beginning after fiscal year 1990 pursuant to section 1105 of title 31, United States Code, the Secretary shall identify the amounts in the appropriations requests for Department accounts that are estimated to be obligated for—

[(1) the payment of compensation to veterans for disabilities resulting from post-traumatic stress disorder (hereinafter in this section referred to as "PTSD") that is service-connected;

[(2) the treatment of veterans by or at the expense of the Department for PTSD related to their active-duty service, including specific designation of funds for the treatment of PTSD—

[(A) in PTSD programs designated pursuant to section 110(a)(1) of Public Law 98-528;

[(B) in inpatient psychiatric programs and outpatient mental health programs other than such designated PTSD programs;

[(C) in readjustment counseling programs pursuant to 612A of title 38, United States Code; and

[(D) under contract through non-Department providers of (i) readjustment counseling services pursuant to section 612A(e) of such title, (ii) mental health services pursuant to such section 612A(e), or (iii) mental health services pursuant to other authority, and described in the first annual report submitted pursuant to section 110(e)(1) of Public Law 98-528 as having been proposed by the Special Committee on Post-Traumatic Stress Disorder;

[(3) education, training, and research at—

[(A) the National Center on Post-Traumatic Stress Disorder established under section 110(c) of Public Law 98-528;

[(B) any centers of mental illness research, education, and clinical activities that may be established at Department medical centers; and

[(C) other Department research facilities; and

[(4) the operation of the National Center on Post-Traumatic Stress Disorder.

[PART B—OTHER HEALTH-CARE PROGRAMS

[SEC. 211. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITIES AFFECTING PROCREATION.

[Clause (A) of section 601(6) is amended to read as follows:

> [“(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse when such services are necessary to overcome a service-connected disability impairing the veteran's procreative ability, (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) (except under the conditions described in section 612(f)(1)(A)(i) of this title) wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Secretary determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and”.

[SEC. 212. COMPENSATED WORK THERAPY PROGRAM.

[(a) AUTHORIZED SOURCES FOR PROVISION OF THERAPEUTIC WORK.—Subsection (b)(1) of section 618 is amended by striking out “contractual arrangements with private industry or other sources outside the Veterans' Administration” and inserting in lieu thereof “a contract or other arrangement with any appropriate source (whether or not an element of the Department of Veterans Affairs or of any other Federal entity)”.

[(b) USE OF REVOLVING FUND.—The first sentence of such section is amended by inserting before the period at the end “(including defraying the costs of travel and related expenses necessary to train employees in the administration of services under such subsection)”.

[SEC. 213. STATE HOME CONSTRUCTION GRANTS.

[Section 5033(a) is amended in the first sentence by striking out “September 30, 1989” and inserting in lieu thereof “September 30, 1992”.

[SEC. 214. PILOT PROGRAM FOR FURNISHING ASSISTIVE ANIMALS TO CERTAIN VETERANS.

[(a) REQUIREMENT FOR PILOT PROGRAM.—During fiscal years 1990, 1991, 1992, and 1993, the Secretary of Veterans Affairs shall conduct a pilot program under which the Secretary shall—

[(1) furnish (A) to not more than 20 quadriplegic veterans who have service-connected disabilities rated 50 percent or more, monkeys that are specially trained to assist in the performance of daily living tasks for quadriplegic individuals, and (B) to not more than 10 such veterans, dogs that are so trained; and

[(2) facilitate the furnishing of monkeys that are so trained to not more than 20 other quadriplegic veterans.

[(b) SELECTION OF VETERAN-PARTICIPANTS.—(1) In determining whether to furnish a monkey or dog referred to in subsection (a) to a veteran, or to facilitate the furnishing of such a monkey to a veteran, under the pilot program, the Secretary shall (A) consider the extent to which the veteran needs and can benefit from the assistance of the monkey or dog, and (B) provide a preference for veterans who have service-connected quadriplegia.

[(2) The Secretary shall approve a veteran for participation in the pilot program only upon the Secretary's determination that the veteran is well-suited for—

[(A) carrying out the responsibilities involved in the care of the monkey or dog; and

[(B) effectively using the monkey or dog for assistance in performing the veteran's daily living tasks.

[(c) ADMINISTRATIVE MATTERS.—(1) The Secretary is authorized to enter into contracts for the furnishing of assistive monkeys and dogs under subsection (a)(1). Under such contracts the Secretary may make advance payments for the furnishing of the monkeys or dogs before receipt of the monkeys or dogs and may either reimburse the provider of such monkeys and dogs for the costs of training the monkeys or dogs or, subject to such terms and conditions as the Secretary determines necessary to protect the interests of the Government, make advance payments for such costs before the costs are incurred.

[(2) Ownership of an animal furnished to a veteran under the pilot program shall be determined in accordance with a contract between the provider of such animal and the veteran.

[(d) EVALUATION AND REPORT.—(1) The Secretary shall evaluate the conduct of the pilot program, the nature and extent of the benefit to veterans furnished animals under the program (including any benefits related to employment), the costs and cost-effectiveness of furnishing animals to quadriplegic veterans, and the effects of such program on the recruitment and retention of paid primary caregivers for veterans receiving such animals and on the morale of unpaid primary caregivers for such veterans.

[(2) Not later than February 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience under the pilot program. The report shall contain—

[(A) the results of the evaluation carried out under paragraph (1), including descriptions of the procedures and criteria used to select veterans to receive monkeys or dogs, the nature and extent of the benefit that the veterans received from the assistance of such monkeys or dogs, and the amounts and types of costs incurred by the Department of Veterans Affairs in the conduct of the program;

[(B) the Secretary's views on the relationship between the furnishing of a monkey or dog to a veteran and the payment to a veteran of (i) an aid and attendance allowance under section 314(r) of title 38, United States Code, or (ii) an annual rate of pension under section 521 of such title based on the veteran's need of regular aid and attendance; and

[(C) any recommendations that the Secretary considers appropriate regarding whether the pilot program should be continued or whether the authority to furnish assistive monkeys and dogs to quadriplegic veterans should be made permanent.

[(e) DEFINITIONS.—For the purposes of this section, the terms "veteran" and "service-connected" have the meanings given those terms in paragraphs (2) and (16), respectively, of section 101 of title 38, United States Code.

[SEC. 215. PILOT PROGRAM FOR PROVIDING SIGNAL DOGS TO CERTAIN VETERANS.

[(a) SIGNAL DOGS PILOT PROGRAM.—(1) Except as provided in paragraph (2), during fiscal years 1990, 1991, 1992, and 1993, the Secretary of Veterans Affairs shall conduct a pilot program under which the Secretary shall furnish signal dogs (as defined in subsection (e)(2)) to not more than 20 veterans who have service-connected hearing impairments and are in need of the assistance of such dogs.

[(2) The Secretary is not required to conduct a pilot program under this section if the Secretary determines that the provision of such dogs to such veterans by the Department of Veterans Affairs is authorized under chapter 17 of title 38, United States Code.

[(b) SELECTION OF VETERAN-PARTICIPANTS.—In making a determination whether to furnish a signal dog to a veteran under the pilot program, the Secretary shall consider the extent to which the veteran needs and can benefit from the assistance of the signal dog. The Secretary shall approve a veteran for participation in the pilot program only upon the Secretary's determination that the veteran is well-suited for carrying out the responsibilities involved in the care and effective use of the signal dog.

[(c) Ownership of Signal Dogs Furnished to Veterans.—Ownership of a signal dog furnished to a veteran under the pilot program shall be determined in accordance with a contract between the provider of such dog and the veteran.

[(d) Evaluation and Report.—The Secretary shall—

[(1) evaluate the conduct of any pilot program carried out under this section, the nature and extent of the benefit that the veterans received from the assistance of the signal dogs furnished under the program (including any benefits related to employment), and the costs and cost-effectiveness of furnishing such dogs to veterans who have hearing impairments; and

[(2) include in the report required by section 114(d)(2)—

[(A) the results of the evaluation carried out under clause (1), including descriptions of the procedures and criteria used to select veterans to receive signal dogs, the nature and extent of the benefit that the veterans received from the assistance of such dogs, and the amounts and types of costs incurred by the Department of Veterans Affairs in the conduct of the program; and

[(B) any recommendations that the Secretary considers appropriate regarding whether the pilot program should be continued or whether the authority to furnish signal dogs to hearing-impaired veterans in need of the assistance of such dogs should be made permanent.

[(e) Definitions.—In this section:

[(1) The terms "veteran" and "service-connected" have the meanings given those terms in paragraphs (2) and (16), respectively, of section 101 of title 38, United States Code.

[(2) The term "signal dog" means a dog specially trained to provide hearing assistance to deaf persons.

[Part C—Health-Care Administration

[SEC. 221. SECURITY SERVICES.

[(a) Security and Law Enforcement Functions.—Section 218 is amended by adding at the end the following new subsection:

["(f) Subject to the authority, direction, and control of the Secretary, the Assistant Secretary assigned management, productivity, and logistic support functions shall be responsible for the functional and technical supervision of the performance of security and law enforcement functions under this section.".

[(b) Report on Security and Law Enforcement Matters.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing—

[(1) the Secretary's plan for improving the training, recruitment, and pay of security and law enforcement personnel of the Department of Veterans Affairs; and

[(2) the Secretary's assessment of—

[(A) the need for establishing a policy on the issuance of weapons to such personnel assigned to medical centers of the Department located in high crime areas and the use of weapons by such personnel; and

[(B) the advisability of reducing the security and law enforcement services at Department facilities that do not have significant security problems in order to increase those services at facilities with more significant security problems.

[SEC. 222. SHARING OF SPECIALIZED MEDICAL RESOURCES.

[(a) Expansion of Purpose.—Section 5051 is amended by striking out "hospitals" both places it appears in the first sentence and inserting in lieu thereof "health-care facilities".

[(b) Revision of Authority To Share Specialized Medical Resources.—Section 5053 is amended—

[(1) in subsection (a)—

[(A) by striking out "hospitals" the first place it appears and all that follows through "community" and inserting in lieu thereof "health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools"; and

[(B) by striking out the last sentence; and

[(2) in subsection (b)—

[(A) in the first sentence, by striking out "charge" and all that follows and inserting in lieu thereof "methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved."; and

[(B) in the second sentence, by inserting before the period at the end "and to funds that have been allotted to the facility that furnished the resource involved".

[SEC. 223. COVERAGE OF VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION PERSONNEL BY FEDERAL EMPLOYEES' COLLECTIVE BARGAINING PROCEDURES.

[Section 4108 is amended—

[(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

[(2) by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department of Veterans Affairs";

[(3) by striking out "Department of Medicine and Surgery" each place it appears and inserting in lieu thereof "Veterans Health Services and Research Administration";

[(4) in subsection (a), by inserting "except as provided in subsection (e) of this section," after "Notwithstanding any law, Executive order, or regulation,";

[(5) in subsection (c)(2), by striking out "non-Veterans' Administration" and inserting in lieu thereof "non-Department of Veterans Affairs";

[(6) in subsection (d), by inserting "except as provided in subsection (e) of this section," after "Notwithstanding any other provision of law,"; and

[(7) by adding at the end the following new subsection:

["(e) The provisions of chapter 71 of title 5 shall apply to the exercise of the Secretary's authority under this section except with respect to—

["(1) the prohibitions set out in paragraphs (1) through (6) of subsection (a) of this section; and

["(2) the matters covered by section 4110 of this title.".

[SEC. 224. DISCIPLINARY ACTIONS AND GRIEVANCES.

[Section 4110 is amended—

[(1) by striking out subsection (a) and inserting in lieu thereof the following:

["(a)(1) The Chief Medical Director, under regulations prescribed by the Secretary, shall from time to time appoint disciplinary boards to determine, upon notice and fair hearing, the charges in any disciplinary action brought against a person employed in a position listed in paragraph (1) of section 4104 of this title (hereafter in this section referred to as the 'respondent') on the basis of the performance or conduct of such person during employment with the Department of Veterans Affairs.

["(2) A disciplinary board appointed in the case of any respondent shall consist of not less than three nor more than five employees of the Veterans Health Services and Research Administration who are senior in grade to the respondent. The majority of the members of such board shall be employed in the same category of position as the respondent.

["(3) The Chief Medical Director may delegate the performance of the function of appointing a disciplinary board to an employee of the Veterans Health Services and Research Administration who is not involved in deciding whether to file charges to be determined by the board and who is not subordinate to any official involved in making such decision.";

[(2) in subsection (b), by striking out "Administrator" and inserting in lieu thereof "Secretary";

[(3) in subsection (d)—

[(A) in the first sentence, by striking out "suitable" and all that follows and inserting in lieu thereof "that the proposed disciplinary action be sustained or modified within limitations prescribed by the Secretary.";

[(B) in the second, third, and fourth sentences, by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

[(4) in subsection (e), by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary"; and

[(5) by adding at the end the following:

["(f)(1) A disciplinary board is not required in the case of a disciplinary action if the proposed action is suspension for 14 days or less, reassignment without a reduction in basic pay, reduction in rank without a reduction in basic pay, reprimand, or admonishment.

["(2) An employee against whom a disciplinary action described in paragraph (1) of this subsection is proposed to be taken shall be entitled to—

["(A) an advance written notice stating the specific reasons for the proposed action;

[“(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

[“(C) representation by an attorney or other spokesperson; and

[“(D) a written decision and the specific reasons for the decision at the earliest practicable date.

[“(3) Disciplinary actions described in paragraph (1) of this subsection shall be subject to review under either the provisions of section 4120A of this title (in the case of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5) or an agency review procedure to be established by the Secretary (in the case of such employees who are not members of such a unit). Any such agency review procedure established by the Secretary shall include—

[“(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

[“(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the Department of Veterans Affairs;

[“(C) a prompt report of the findings and recommendations by the impartial examiner; and

[“(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the Department on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.”.

[(b) Grievances.—(1) Subchapter I of chapter 73 is amended by adding at the end the following new section:

[“§ 4120A. Grievances and certain disciplinary reviews

[“(a)(1) The Secretary shall authorize review of Department of Veterans Affairs actions on the following matters under procedures established by collective bargaining in accordance with the provisions of chapter 71 of title 5:

[“(A) Grievances of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5.

[“(B) Subject to paragraph (2) of this subsection, disciplinary actions described in subsection 4110(f)(1) of this title involving such employees.

[“(2) In the case of a review of a disciplinary action involving any question of clinical competence, as determined by either party, any person selected to serve as an arbitrator in such case under procedures established as provided in paragraph (1) of this subsection must be qualified as an arbitrator and must also be (A) qualified as a physician, dentist, or nurse, or (B) otherwise qualified, by specialized experience or training or both, in examining and adjudicating health-care issues.

[“(b) For the purpose of resolving grievances of supervisors and employees appointed under authority of this chapter who are not members of a unit determined appropriate under section 7112 of title 5, the Secretary shall authorize review of action of the Department on such grievances pursuant to a Department review procedure established by the Secretary under section 4110(f)(3) of this title.”.

[(2) The table of sections at the beginning of chapter 73 is amended by adding at the end of subchapter I the following new item:

[“4120A. Grievances and certain disciplinary reviews.”.

[SEC. 225. DEVELOPMENT OF RECOMMENDED LEGISLATION FOR THE ELIMINATION OF INCONSISTENCIES IN CERTAIN VETERANS BENEFITS LAWS.

[(a) Requirement To Establish Task Force.—The Secretary of Veterans Affairs shall establish a task force to recommend policies and legislation for the elimination of inconsistencies among provisions of law relating to veterans' eligibility for certain health-care benefits.

[(b) Composition of Task Force.—The task force shall be composed of employees of the Department of Veterans Affairs, including representatives of the Veterans Health Services and Research Administration, the Veterans Benefits Administration, and the Office of the General Counsel.

[(c) Responsibilities of Task Force.—The task force shall—

[(1) identify inconsistencies among sections 601(6), 612, 614, 617, and 619 of title 38, United States Code, and the implementation of such sections;

[(2) after consultation with appropriate representatives of veterans, develop policy recommendations and legislative proposals for the elimination of any such inconsistencies; and

[(3) not later than the date specified by the Secretary, submit to the Secretary a report containing (A) descriptions of the inconsistencies identified by the task force, (B) the policies and legislative proposals recommended by the task force for the elimination of such inconsistencies, and (C) the reasons for each such recommendation.

[(d) Action by the Secretary.—The Secretary shall review the report submitted by the task force and either approve the recommendations for legislation contained in the report or prepare alternative legislative proposals that the Secretary considers appropriate for the elimination of the inconsistencies identified by the task force.

[(e) Submission of Recommendations to Congress.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

[(1) the report submitted to the Secretary by the task force; and

[(2) a report containing—

[(A) the legislation recommended by the Secretary for the elimination of the inconsistencies identified by the task force;

[(B) an analysis of the legislation recommended by the Secretary; and

[(C) the reasons for any differences between the legislation recommended by the Secretary and the legislation recommended by the task force.]

and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Veterans Benefits and Health Care Act of 1989".

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Reference to title 38, United States Code.
Sec. 3. Definitions.

TITLE I—COMPENSATION AND PENSION

Sec. 101. Disability compensation and dependency and indemnity compensation.
Sec. 102. Expansion of clothing allowance.
Sec. 103. Pension limitations for hospitalized veterans.

TITLE II—HEALTH CARE

Part A—Mental Health

Sec. 201. Care for combat-theater veterans with service-related post-traumatic stress disorder.
Sec. 202. Eligibility for services at Vet centers.
Sec. 203. Community-based residential care for homeless and certain other chronically mentally ill veterans.
Sec. 204. Mental illness research, education, and clinical centers.
Sec. 205. Special Committee on Post-Traumatic Stress Disorder.
Sec. 206. Study of and research on Department of Veterans Affairs outreach services and health-care services for certain Vietnam veterans suffering from post-traumatic stress disorder.
Sec. 207. Funding for post-traumatic stress disorder programs.

Part B—General Health

Sec. 211. Services to overcome service-connected disabilities affecting procreation.
Sec. 212. Compensated work therapy and therapeutic residence pilot program.
Sec. 213. Pilot program: noninstitutional alternatives to nursing home care.
Sec. 214. Preventive medicine.
Sec. 215. Extension of authority to furnish respite care.
Sec. 216. Pilot program for furnishing assistive animals to certain veterans.
Sec. 217. Signal dogs for certain disabled veterans.
Sec. 218. State home construction grants.
Sec. 219. Prosthetic services report.
Sec. 220. Outpatient dental care.
Sec. 221. Reimbursement for emergency care of vocational rehabilitation participants.
Sec. 222. Repeal of authority to furnish tobacco to veterans receiving hospital or domiciliary care.
Sec. 223. Sharing of specialized medical resources.
Sec. 224. Development of recommended legislation for the elimination of inconsistencies in certain veterans benefits laws.

Part C—Health-Care Personnel

Sec. 250. Short title.
Sec. 251. Pay rates for nurses and other health-care professionals in certain positions.
Sec. 252. Employment of personnel trained by the Department of Veterans Affairs.
Sec. 253. Director pay.
Sec. 254. Overtime rates of pay for certain nurses.
Sec. 255. Additional pay for head nurses.
Sec. 256. Pay enhancements for certain health-care personnel.
Sec. 257. Special rates cap and approval.
Sec. 258. Elimination of reduction in retired or retainer pay.
Sec. 259. Awards for recertification.
Sec. 260. Coverage of Veterans Health Services and Research Administration personnel by Federal employees' collective bargaining procedures.
Sec. 261. Disciplinary actions and grievances.
Sec. 262. Leave transfers and banks.

Sec. 263. Temporary appointments of health-care personnel.
Sec. 264. Health-care professionals cash awards.
Sec. 265. Dependent care assistance program.
Sec. 266. Health professional scholarships.
Sec. 267. Assistance to health-personnel educational institutions.
Sec. 268. Payment of physicians' and dentists' special pay.
Sec. 269. Pilot program of pay and personnel management practices.
Sec. 270. Rates of pay for certain psychologists.

TITLE III—EDUCATION AND EMPLOYMENT

Sec. 300. Short title.
Sec. 301. Rehabilitation subsistence allowances for veterans with service-connected disabilities.
Sec. 302. Educational assistance for survivors and dependents.
Sec. 303. Vocational training for certain pension recipients.
Sec. 304. Provision for permanent program of independent living services and assistance.
Sec. 305. Veterans' and reservists' work-study program.
Sec. 306. Work-study program for survivors and dependents.
Sec. 307. Withdrawal from course under mitigating circumstances.
Sec. 308. Limited extension and expansion of the veterans' readjustment appointment authority.
Sec. 309. Pilot program to furnish employment and training information and services to members of the Armed Forces separating from the Armed Forces.
Sec. 310. Alternate secondary school credentials for Montgomery GI Bill eligibility.
Sec. 311. Bar to receipt of chapter 32 and 106 benefits for same period of service.
Sec. 312. Accepting school certification for renewal of educational benefits after unsatisfactory progress.
Sec. 313. Removal of attendance requirement distinctions between degree and nondegree training.
Sec. 314. Funding for State approving agencies for training curriculum development.
Sec. 315. Proof of satisfactory pursuit of a program of education.
Sec. 316. Reporting fees.
Sec. 317. Clock-hour measurement of certain unit courses or subjects creditable toward a standard college degree.
Sec. 318. Department of Veterans Affairs approval of certain courses.
Sec. 319. Limitations on changes of programs of education.
Sec. 320. Effective date of adjustments of educational benefits.
Sec. 321. Technical and clerical amendments.

TITLE IV—HOME LOAN

Sec. 400. Short title.
Sec. 401. Establishment of Home Loan Guaranty Fund.
Sec. 402. Loan fee.
Sec. 403. Indemnification of veteran after default.
Sec. 404. Sale of vendee loans.
Sec. 405. Computation of entitlement amount.
Sec. 406. Procedures on default.
Sec. 407. Refinancing loans.
Sec. 408. Waiver of indebtedness.
Sec. 409. Clarifying correction regarding entitlement.

TITLE V—MEMORIAL AFFAIRS

Sec. 501. Reimbursement for cost of cemetery headstone or marker.
Sec. 502. Cremated remains in Arlington National Cemetery.
Sec. 503. New Arizona national cemetery.

TITLE VI—MINORITY AFFAIRS

Sec. 601. Assignment of minority issues to an Assistant Secretary of Veterans Affairs.
Sec. 602. Reestablishment of the Advisory Committee on Native American Veterans.
Sec. 603. Study of home loans to Native-American veterans.

TITLE VII—MISCELLANEOUS

Sec. 701. Security services.
Sec. 702. Expansion of multiyear procurement authority to include non-medical items.
Sec. 703. Notice of procedural rights and other information.
Sec. 704. Use of Internal Revenue Service and Social Security Administration data for income verification.
Sec. 705. Court of Veterans Appeals.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 3. DEFINITIONS.

Section 101 is amended by adding at the end the following new paragraph:

"(33) The term 'Secretary' means the Secretary of Veterans Affairs (except when the context indicates otherwise).".

TITLE I—COMPENSATION AND PENSION

SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) In General.—(1)(A) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1989 (except as provided in subparagraph (B)), the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

(B) The Secretary shall make effective August 1, 1990, the increase in the rate in section 314(k) of title 38, United States Code, that as of September 1, 1989, was $63.

(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, the Secretary shall increase such rates and limitations, as in effect on November 30, 1989, by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1989, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A)—

(i) except in the case of rates of disability compensation for a disability rated at 20 percent or below, amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount; and

(ii) in the case of rates of disability compensation for a disability rated at 20 percent or below, amounts of less than $1.00 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1990, the Secretary shall publish in the Federal Register the rates and limitations being increased under this section and the rates and limitations as so increased.

SEC. 102. EXPANSION OF CLOTHING ALLOWANCE.

Section 362 is amended—

(1) by striking out "Administrator" the first two places it appears and inserting in lieu thereof "Secretary"; and

(2) by striking out all after "each veteran" and inserting in lieu thereof "who, because of disability which is compensable under this chapter—

"(1) wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of such veteran; or

"(2) uses medication which (A) has been prescribed for a service-connected skin condition, and (B) the Secretary determines stains or otherwise damages such veteran's clothing.".

SEC. 103. PENSION LIMITATIONS FOR HOSPITALIZED VETERANS.

(a) AMOUNT OF LIMITATION.—Section 3203(a)(1) is amended by striking out "$60" each place it appears in subparagraphs (A) and (C) and inserting in lieu thereof "$105".

(b) EXTENSION OF PERIOD FOR PAYMENT OF FULL PENSION TO HOSPITALIZED VETERANS.—Section 3203(a)(1) is amended—

(1) by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B) Except as provided in subparagraphs (D) and (E) of this paragraph, where any veteran having neither spouse nor child is being furnished hospital or nursing home care by the Department of Veterans Affairs, no pension in excess of $105 per month shall be paid to or for the veteran for any period after—

"(i) in the case of a veteran being furnished hospital care, the end of the eighth calendar month following the month of admission for such care; and

"(ii) in the case of a veteran being furnished nursing home care, the end of the third calendar month following the month of admission for such care.";

(2) in the first sentence of subparagraph (D), by striking out "the last day of the third month referred to in such subparagraph" and inserting in lieu thereof "the last day of the period for which the veteran's pension is not reduced under such subparagraph"; and

(3) by adding at the end the following new subparagraph:

"(E) The Secretary may extend the period during which the pension of a veteran referred to in subparagraph (B)(i) of this paragraph is not reduced under such subparagraph if the Secretary determines that the veteran is likely to be discharged from the hospital within the period for which the extension is granted or within a reasonably short period after the expiration of such extended period. No extension may be granted under this subparagraph for a period exceeding two months. Successive extensions may be granted, but the total period of all extensions granted a veteran under this subparagraph in connection with one hospitalization may not exceed four months.".

(c) Limitations on Estates of Incompetent Institutionalized Veterans Receiving Pension.—Section 3203(b)(1)(A) is amended—

(1) by striking out "$1,500" and inserting in lieu thereof "$6,000"; and

(2) by striking out "$500" and inserting in lieu thereof "$2,000".

(d) Effective Date.—The amendments made by subsections (a), (b), and (c) shall take effect with respect to veterans who are being furnished hospital care by the Department of Veterans Affairs on or after (1) the first day of the first month that begins after the date of the enactment of this Act, or (2) October 1, 1989, whichever is later.

TITLE II—HEALTH CARE

Part A—Mental Health

SEC. 201. CARE FOR COMBAT-THEATER VETERANS WITH SERVICE-RELATED POST-TRAUMATIC STRESS DISORDER.

(a) Requirement To Furnish Care and Services.—(1) Section 602 is amended—

(A) by inserting "(a)" before "For"; and

(B) by adding at the end the following new subsections:

"(b)(1) Any veteran—

"(A) who, as determined by the Chief Benefits Director of the Department of Veterans Affairs in accordance with paragraph (2) of this subsection, served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, the Korean conflict, or the Vietnam era or in any other area during a period in which hostilities (as defined in subsection (c) of this section) occurred in such area, and

"(B) whom a mental health professional designated by the Chief Medical Director has diagnosed, following an examination of such veteran by such professional, to be suffering from post-traumatic stress disorder related to such service,

shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A) of this title even though such disorder has not been determined to be service-connected.

"(2) In the case of a veteran who is diagnosed as suffering from post-traumatic stress disorder, a determination of whether the veteran satisfies the service requirement related to such disorder set out in paragraph (1) of this subsection shall be made by the most expeditious means practicable.

"(c) For the purposes of subsection (b) of this section, the term 'hostilities' means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.".

(2)(A) The heading of such section is amended to read as follows:

"§ 602. Special provisions relating to mental illness disabilities".

(B) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

"602. Special provisions relating to mental illness disabilities.".

(b) Timeliness of Evaluation and Verification of Status.—Section 612A is amended—

(1) in subsection (h)—

(A) by striking out "Administrator" and "Veterans' Administration" each place it appears and inserting in lieu thereof "Secretary" and "Department", respectively; and

(B) in paragraph (5), by striking out "the Secretary considers" and inserting in lieu thereof "such Secretary considers";

(2) by redesignating subsection (i) as subsection (j) and, in such subsection, by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department"; and

(3) by inserting after subsection (h) the following new subsection (i):

"(i) Whenever a veteran is referred by a center to a Department general health-care facility for a determination regarding such veteran's eligibility for care and services under section 602(b) of this title, the veteran shall be evaluated for diagnostic purposes within 7 days after the date on which the referral is made.".

SEC. 202. ELIGIBILITY FOR SERVICES AT VET CENTERS.

Subsection (a) of section 612A is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Upon the request of any veteran who served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, or the Korean conflict or in any other area during a period in which hostilities (as defined in subparagraph (B) of this paragraph) occurred in such area, the Secretary may furnish counseling to such veteran in order to assist the veteran to overcome any psychological problems associated with such service. The counseling shall include a general mental and psychological assessment to ascertain whether the veteran has mental or psychological problems associated with such service.

"(B) For the purposes of subparagraph (A) of this paragraph, the term 'hostilities' means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.".

SEC. 203. COMMUNITY-BASED RESIDENTIAL CARE FOR HOMELESS AND CERTAIN OTHER CHRONICALLY MENTALLY ILL VETERANS.

(a) In General.—(1) Chapter 17 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 620C. Community-based residential care for homeless and other chronically mentally ill veterans.

"(a)(1) The Secretary shall conduct a program to furnish care and treatment and rehabilitative services (directly or by contract) in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities to homeless veterans suffering from chronic mental illness disabilities who are eligible for care under section 610(a)(1) of this title.

"(2) As part of the program, the Secretary may also provide such care and treatment and rehabilitative services to—

"(A) veterans with service-connected chronic mental illness disabilities;

"(B) veterans described in section 612(a)(1)(B) of this title who have chronic mental illness disabilities; and

"(C) veterans being furnished hospital or nursing home care by the Secretary for chronic mental illness disabilities.

"(b) Before furnishing care and treatment and rehabilitative services by contract under subsection (a)(1) of this section to a veteran through a facility described in such subsection, the Secretary shall approve (in accordance with criteria which the Secretary shall prescribe) the quality and effectiveness of the program operated by such facility for the purpose for which the veteran is to be furnished such care and services.

"(c) The Secretary may provide in-kind assistance (through the services of Department of Veterans Affairs employees and the sharing of other Department resources) to a non-Department facility described in subsection (a)(1) of this section that is furnishing care and services to veterans under this section. Any such in-kind assistance shall be provided under a contract between the Department and such facility. The Secretary may provide such assistance only for use solely in the furnishing of appropriate care and services under this subsection and only if, under such contract, the Department receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

"(d) The Secretary may not furnish care and treatment and rehabilitative services under subsection (a) of this section after September 30, 1992.

"(e) Not later than February 1, 1992, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience of the Department under this section and the recommendation of the Secretary (together with the reasons for such recommendation) as to whether the program should be continued.

"(f) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 620B the following new item:

"620C. Community-based residential care for homeless and other chronically mentally ill veterans.".

(b) Conforming Amendment.—Section 801(c) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100–628; 102 Stat. 3257) is amended by striking out "section 115 of the Veterans Benefits and Services Act of 1988 (Public Law 100–322; 102 Stat. 501)" and inserting in lieu thereof "section 620C of title 38, United States Code,".

SEC. 204. MENTAL ILLNESS RESEARCH, EDUCATION, AND CLINICAL CENTERS.

(a) In General.—Section 4101 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) The purposes of this subsection are (A) to improve and expand the capability of Department of Veterans Affairs health-care facilities to respond with the most effective and appropriate services possible to the needs of veterans suffering from mental illness, especially from service-related conditions, and (B) to advance scientific knowledge regarding mental illness, especially service-related conditions, and regarding such needs and the methods of meeting them by facilitating higher quality care for eligible veterans suffering from mental illness, especially from service-related conditions, through research, the education and training of health personnel in the provision of health care to such veterans, and the development of improved models of clinical services for eligible veterans suffering from mental illness.

"(2)(A) In order to carry out the purposes of this subsection, the Secretary, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five health-care facilities of the Department of Veterans Affairs (at least one of which shall be designated before July 1, 1990) as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

"(B) In designating facilities as the locations for centers under subparagraph (A) of this paragraph, the Secretary, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

"(C) The Secretary may not designate any health-care facility as a location for a center under subparagraph (A) of this paragraph unless the Secretary, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

"(i) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an arrangement under which residents receive education and training in psychiatry through regular rotation through such center so as to provide such residents with training in the diagnosis and treatment of mental illness;

"(ii) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such center so as to provide such students with training in the diagnosis and treatment of mental illness;

"(iii) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

"(iv) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

"(v) a policymaking advisory committee composed of appropriate mental health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

"(vi) the capability to conduct effectively evaluations of the activities of such center.

"(3) There are authorized to be appropriated for the basic support of the research and education and training activities of the centers established pursuant to paragraph (1) of this subsection $3,125,000 for fiscal year 1990 and $6,250,000 for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Department of Veterans Affairs medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

"(4) Activities of clinical and scientific investigation at each center shall be eligible to compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

"(5) The Chief Medical Director shall ensure that research activities carried out through such centers include an appropriate emphasis on the psychosocial dimension of mental illness and on models for furnishing care and treatment to veterans suffering from mental illness.

"(6) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical activities of such centers is disseminated throughout the Veterans Health Services and Research Administration through the development of programs of continuing medical and related education provided through regional medical education centers under subchapter II of chapter 73 of this title and other means.

"(7) The official within the Central Office of the Veterans Health Services and Research Administration responsible for mental health and behavioral sciences matters shall be responsible for the supervision of the operation of the centers established pursuant to paragraph (1) of this subsection.".

(b) REPORTS.—Not later than February 1 of each of 1991, 1992, and 1993, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience during the prior fiscal year under the centers established pursuant to the amendment made by subsection (a). Each such report shall contain—

(1) descriptions of (A) activities carried out at each center and the funding provided for such activities, (B) the advances made at each center in research, education and training, and clinical activities, and (C) the efforts to disseminate throughout the Veterans Health Services and Research Administration useful information produced by such activities; and

(2) the Secretary's evaluations of the effectiveness of the centers in fulfilling the purposes of subsection (g) of section 4101 of title 38, United States Code, as added by subsection (a).

SEC. 205. SPECIAL COMMITTEE ON POST-TRAUMATIC STRESS DISORDER.

(a) EVALUATION OF STUDY OF POSTWAR PSYCHOLOGICAL PROBLEMS OF VIETNAM VETERANS.—(1) Not later than January 1, 1990, the Special Committee on Post-Traumatic Stress Disorder (hereinafter in this section referred to as the "Special Committee") established pursuant to section 110(b)(1) of the Veterans' Health Care Act of 1984 (Public Law 98-528; 98 Stat. 2691) shall submit concurrently to the Secretary of Veterans Affairs and the Committees on Veterans' Affairs of the Senate and House of Representatives (hereinafter in this section referred to as the "Committees") a report setting forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 994). Such report shall include the Special Committee's—

(A) overall evaluation of the conduct, validity, and meaning of the study;

(B) assessment of the capability of the Department of Veterans Affairs to meet the need for diagnosing and treating veterans for post-traumatic stress disorder and for other psychological problems in readjusting to civilian life, as estimated in the results of such study;

(C) evaluation of the Secretary's report on the study; and

(D) recommendations for any further or follow-up research on the matters addressed in the study.

(2) Not later than 30 days after receiving the Special Committee's report under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

(b) UPDATES OF REPORTS UNDER SECTION 110(c) OF PUBLIC LAW 98-528.—(1) Not later than February 1 of each of 1991 and 1992, the Special Committee shall concurrently submit to the Secretary and the Committees a report containing information updating the reports submitted to the Secretary under section 110(e) of the Veterans' Health Care Act of 1984 (Public Law 98-528; 98 Stat. 2693), together with any additional information the Special Committee considers appropriate regarding the overall efforts of the Department of Veterans Affairs to meet the needs of veterans with post-traumatic stress disorder and other psychological problems in readjusting to civilian life.

(2) Not later than 60 days after receiving each of the Special Committee's reports under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

SEC. 206. STUDY OF AND RESEARCH ON DEPARTMENT OF VETERANS AFFAIRS OUTREACH SERVICES AND HEALTH-CARE SERVICES FOR CERTAIN VIETNAM VETERANS SUFFERING FROM POST-TRAUMATIC STRESS DISORDER.

(a) STUDY REQUIREMENT.—(1) The National Center on Post-Traumatic Stress Disorder established pursuant to section 110(c) of the Veterans' Health Care Act of 1984 (Public Law 98–528; 98 Stat. 2691) shall provide for a study of the extent to which, and the degree of effectiveness with which, the Department of Veterans Affairs carries out outreach, and furnishes treatment, to Vietnam veterans who (A) are Asian Americans, American Indians, Native Hawaiians, other Native-American Pacific Islanders (including American-Samoan Natives), Alaska Natives, black, or Hispanic Americans, and (B) suffer from post-traumatic stress disorder or other psychological problems in adjusting to civilian life.

(2) The Center shall provide for the conduct of research as necessary to determine the effectiveness of the outreach and treatment described in paragraph (1) and to develop more effective outreach activities and treatment methodologies and programs.

(b) REPORT.—(1) Not later than October 1, 1991, the Center shall submit to the Secretary of Veterans Affairs and to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the results of the study required by subsection (a) and the Center's findings and recommendations on the most effective methods for providing outreach and treatment to Vietnam veterans described in subsection (a)(1).

(2) Not later than 60 days after receiving such report, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(c) DEFINITIONS.—In this section:

(1) The term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(2) The term "Native Hawaiian" has the meaning given that term in section 813(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992c(3)).

SEC. 207. FUNDING FOR POST-TRAUMATIC STRESS DISORDER PROGRAMS.

In the documents providing detailed information on the budget for the Department of Veterans Affairs that the Secretary of Veterans Affairs submits to the Congress in conjunction with the President's budget submission for fiscal year 1991 and for fiscal year 1992 pursuant to section 1105 of title 31, United States Code, the Secretary shall identify the amounts in the appropriations requests for Department accounts that are estimated to be obligated for—

(1) the payment of compensation to veterans for disabilities resulting from post-traumatic stress disorder (hereinafter in this section referred to as "PTSD") that is service-connected;

(2) the treatment of veterans by or at the expense of the Department for PTSD related to their active-duty service, including specific designation of funds for the treatment of PTSD—

(A) in PTSD programs designated pursuant to section 110(a)(1) of Public Law 98–528;

(B) in inpatient psychiatric programs and outpatient mental health programs other than such designated PTSD programs;

(C) in readjustment counseling programs pursuant to 612A of title 38, United States Code; and

(D) under contract through non-Department sources furnishing (i) readjustment counseling services pursuant to section 612A(e) of such title, (ii) mental health services pursuant to such section 612A(e), or (iii) mental health services pursuant to other authority, and described in the first annual report submitted pursuant to section 110(e)(1) of Public Law 98–528 as having been proposed by the Special Committee on Post-Traumatic Stress Disorder;

(3) education, training, and research at—

(A) the National Center on Post-Traumatic Stress Disorder established under section 110(c) of Public Law 98-528;

(B) any centers of mental illness research, education, and clinical activities that may be established at Department medical centers; and

(C) other Department research facilities; and

(4) the operation of the National Center on Post-Traumatic Stress Disorder.

PART B—GENERAL HEALTH

SEC. 211. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITIES AFFECTING PROCREATION.

(a) DEFINITION OF "MEDICAL SERVICES".—Clause (A) of section 601(6) is amended to read as follows:

"(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse when such services are necessary to overcome a service-connected disability impairing a veteran's procreative ability (but only if such services are furnished by contract, except for services which the Chief Medical Director determines that Department of Veterans Affairs facilities are fully capable of furnishing in a cost-effective manner), (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) (except under the conditions described in section 612(f)(1)(A)(i) of this title) wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Secretary determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

(b) ADVISORY COMMITTEE.—The Chief Medical Director of the Department of Veterans Affairs shall appoint an advisory committee to advise the Chief Medical Director on the exercise of authority to furnish services described in subclause (ii) of section 601(6)(A) of title 38, United States Code, as added by subsection (a). Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee appointed under this subsection.

SEC. 212. COMPENSATED WORK THERAPY AND THERAPEUTIC RESIDENCE PILOT PROGRAM.

(a) AUTHORIZED SOURCES FOR PROVISION OF THERAPEUTIC WORK.—Section 618(b)(1) is amended by striking out "contractual arrangements with private industry or other sources outside the Veterans' Administration" and inserting in lieu thereof "a contract or other arrangement with any appropriate source (whether or not an element of the Department of Veterans Affairs or of any other Federal entity)".

(b) USE OF REVOLVING FUND.—The first sentence of section 618(c)(1) is amended by inserting before the period at the end "(including defraying the costs of travel and related expenses necessary to train and educate employees in the administration of services under such subsection)".

(c) PILOT PROGRAM.—(1) Subchapter II of chapter 17 is amended by inserting after section 618 the following new section:

"§ 618A. Compensated work therapy and therapeutic residence pilot program

"(a) During fiscal years 1990–1994, the Secretary shall conduct a compensated work therapy and therapeutic residence pilot program. The pilot program shall have two components as follows:

"(1) A component, under subsection (b) of this section, which provides for contracting with nonprofit corporations to furnish compensated work therapy in conjunction with the operation of therapeutic residences.

"(2) A component, under subsection (c) of this section, which provides for the direct operation of therapeutic residences in conjunction with the furnishing of compensated work therapy.

"(b)(1) Under the pilot program, the Secretary shall encourage and participate in the establishment of nonprofit corporations for the purpose of contracting with such nonprofit corporations to conduct compensated work therapy programs under the pilot program at not less than ten and not more than fifteen Department of Veterans Affairs medical centers operating such programs.

"(2) The Secretary may enter into a contract with a nonprofit corporation under the pilot program only if the corporation provides assurances satisfactory to the Secretary that it will operate a therapeutic residence for eligible veterans in conjunction with an existing compensated work therapy program at a medical center. The contract may remain in effect only as long as the corporation operates the therapeutic residence for eligible veterans in connection with the pilot program.

"(3) A contract with a nonprofit corporation under this subsection may provide for the Secretary to furnish the corporation (with or without consideration) in-kind services, including—

"(A) technical and clinical advice;

"(B) supervision of the activities of compensated work therapy participants in the rehabilitation of any property for use as a therapeutic residence under the contract and for possible later sale as a private residence; and

"(C) minor maintenance of and minor repairs to such a therapeutic residence.

"(4)(A) In order to assist a nonprofit corporation to purchase or lease any real property for the purpose of operating a therapeutic residence under the pilot program or to operate such a residence, the Secretary may lend the corporation up to the maximum amounts specified in subparagraphs (C) and (D), respectively, of this paragraph.

"(B) Loans authorized by this paragraph shall be paid out of sums in the fund.

"(C) The amount of a loan under this paragraph for the purchase or lease of real property may not exceed—

"(i) in the case of a purchase of real property for such use, the amount equal to 25 percent of the purchase price; or

"(ii) in the case of a lease of real property for such use, the amount of the rent for one year.

"(D) The amount of a loan under this paragraph for the operation of a therapeutic residence may not exceed an amount equal to the estimated amount, as approved by the Secretary, necessary for the operation of the residence for a period of six months.

"(E) A loan made to a nonprofit corporation under this paragraph—

"(i) shall be payable on demand;

"(ii) shall not bear interest for the first five years;

"(iii) after the first five years, shall bear a rate of interest specified by the Secretary, in consultation with the Secretary of the Treasury; and

"(iv) shall be subordinate to any mortgage loan entered into for purchase of the residence.

"(5) In the case of each nonprofit corporation to which a loan is made under paragraph (4) of this subsection for the purchase of real property, the pilot program contract with such corporation shall include a provision that requires the corporation—

"(A) to sell the real property if the corporation does not operate or ceases to operate a therapeutic residence on that property;

"(B) to pay the fund the sum of the unpaid balance of the loan and the amount equal to 50 percent of the excess, if any, of the sale price over the total amount paid by the corporation for the purchase and improvement of such real property; and

"(C) to use the proceeds of the sale of the property to pay the obligations imposed by clause (B) of this paragraph.

"(6)(A) The Secretary shall deposit in escrow any sums to be loaned to a nonprofit corporation under paragraph (4) of this subsection until the corporation demonstrates to the satisfaction of the Secretary that at least 25 percent of the net annual operating expenses of the corporation will be paid out of funds obtained from sources other than the Department of Veterans Affairs or will be satisfied by in-kind services obtained from such sources, or both. For the purpose of this subparagraph, the term 'net annual operating expenses' means the amount equal to the excess of the estimated amount of the annual expenses of operating the therapeutic residence or therapeutic residences to be acquired or operated with such escrow sums over the estimated annual rental income from eligible veterans residing in such residence or residences.

"(B) If, in the case of a corporation for which any amount is held in escrow pursuant to subparagraph (A) of this paragraph in connection with a contract awarded under the pilot program, the corporation fails to meet the requirements of such subparagraph within 18 months after the award of that contract, the corporation shall forfeit all rights to the amount so held in escrow, the escrow shall be terminated, and that amount shall be credited to the fund.

"(7)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall transfer to the Veterans Health Services and Research Administration not less than 10 residences acquired by the Department of Veterans Affairs in the administration of chapter 37 of this title.

"(B) Each property so transferred under this paragraph—

"(i) shall be located in an area suitable for meeting the need of the Department for a therapeutic residence under the pilot program; and

"(ii) shall be leased, in accordance with subparagraph (C) of this paragraph, to a nonprofit corporation for operation as a therapeutic residence under the pilot program.

"(C) A lease of property under this paragraph—

"(i) shall provide for a lease period of not less than one and not more than three years and may include one or more options for renewal at the option of both parties for up to three additional years;

"(ii) shall require that the property be operated as a therapeutic residence during the lease period;

"(iii) shall require that the residents of the therapeutic residence pay to the nonprofit corporation such reasonable rent as the Secretary shall prescribe;

"(iv) shall require the lessee to pay to the medical center benefiting from the operation of such therapeutic residence 60 percent of the rent received each month during the lease period from eligible veterans residing in a therapeutic residence on such property;

"(v) shall provide for return of the property to the Secretary upon termination of the lease; and

"(vi) shall include such other terms and conditions, consistent with this subsection, as the Secretary considers appropriate for protection of the interests of the United States.

"(8) The director of a medical center shall hold the sums received pursuant to paragraph (8)(C)(iii) of this subsection until such sums are transferred pursuant to this paragraph. The Secretary shall periodically transfer such sums to the appropriate loan guaranty fund. The Secretary, in consultation with the Secretary of the Treasury, shall prescribe regulations to carry out this paragraph.

"(9) In the case of a nonprofit corporation that, on September 30, 1989, is conducting a compensated work therapy program pursuant to a contract awarded by the Department of Veterans Affairs, the operations of such corporation not covered by a contract awarded under the pilot program shall not be affected by the provisions of this subsection.

"(10) In-kind services furnished to a nonprofit corporation by the Department of Veterans Affairs under the pilot program shall be considered as part of a pass-through account under the Department's resource allocation methodology and any other methodology used by the Department to allocate resources to its health-care facilities.

"(11)(A) Any nonprofit corporation established to operate a therapeutic residence or therapeutic residences under the pilot program shall be established in accordance with the nonprofit corporation laws of the State or States in which the therapeutic residence or residences are to be operated and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State or States, as the case may be.

"(B) A nonprofit corporation participating in the pilot program shall be established solely for the purpose of conducting one or more compensated work therapy programs and operating therapeutic residences in conjunction with such programs.

"(C) Except as otherwise provided in this paragraph or under regulations prescribed by the Secretary, a nonprofit corporation participating in the pilot program, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

"(D) The board of directors of each nonprofit corporation participating in the pilot program shall include employees of the Department, but the total number of such employees on the board must be less than one-half of the total number of directors. An employee of the Department of Veterans Affairs directly responsible for the conduct of compensated work therapy programs at the medical center benefiting from the operation of a therapeutic residence by the corporation shall be a member of the board.

"(E) A nonprofit corporation participating in the pilot program may—

"(i) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely to carry out the purpose specified in subparagraph (B) of this subsection;

"(ii) employ such employees as it considers necessary for such purpose and fix the compensation of such employees; and

"(iii) in the discretion of the corporation board of directors, transfer gifts and grants accepted under clause (i) of this subparagraph to the fund.

"(F) The records of a nonprofit corporation participating in the pilot program shall be available to the Secretary.

"(G) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a nonprofit corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

"(H) Such a nonprofit corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

"(I) Each such nonprofit corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

"(J) Each member of the board of directors of a nonprofit corporation participating in the pilot program, each employee of such a corporation, and each employee of the Department involved in the functions of the corporation during any year—

"(i) shall, with respect to such functions, be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

"(ii) shall, with respect to such functions, submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as is required of Federal employees.

"(K) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and locations of nonprofit corporations participating in the pilot program and the amount loaned and the value of in-kind services furnished by the Secretary to each such corporation under the pilot program.

"(c)(1) Under the pilot program, the Secretary, in connection with the conduct of compensated work therapy programs at not less than ten and not more than fifteen Department of Veterans Affairs medical centers, shall operate residences as therapeutic residences for the furnishing of transitional housing solely for veterans who are furnished compensated work therapy pursuant to section 618(b) of this title.

"(2) Notwithstanding any other provision of law, the Secretary may use such procurement procedures for the purchase, lease, or other acquisition of residential housing for purposes of this subsection as the Secretary considers appropriate to expedite the opening and operation of therapeutic residences and to protect the interests of the United States.

"(3) A therapeutic residence may be operated for veterans described in paragraph (1) of this subsection under the following conditions:

"(A) That only veterans described in such paragraph and a house manager reside in such residence.

"(B) That each resident, other than the house manager, pay the Department rent for the period or periods of residence in such residence.

"(C) That, in the establishment and operation of such therapeutic residence in a community, the Secretary consult with appropriate representatives of such community and comply with zoning requirements, building permit requirements, and similar requirements applicable to other real property used for similar purposes in such community.

"(D) That the residence meet the State and community fire and safety requirements applicable to other real property used for similar purposes in the community in which the therapeutic residence is located.

"(4)(A) The Secretary may provide for free room and subsistence for a house manager in addition to or instead of payment of a fee for the house manager's services.

"(B) The total amount of the compensation paid and otherwise provided for a house manager (taking into consideration the value of any free room and subsistence under subparagraph (A) of this paragraph) may not be less than the equivalent of the total amount that would be payable to the house manager for the house manager's services if the house manager were paid the hourly minimum wage under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)).

"(5) The Secretary may operate as a therapeutic residence under this subsection—

"(A) any suitable residential property (i) acquired by the Secretary as the result of a default on a loan made, guaranteed, or insured under chapter 37 of this title, or (ii) purchased for the pilot program; and

"(B) any other suitable residential property purchased, leased, or otherwise acquired by the Secretary.

"(6) In the case of the purchase of any property referred to in paragraph (5)(A) of this subsection, the Secretary shall transfer from unobligated amounts in the fund to the appropriate loan guaranty fund the amount equal to the amount that the Secretary would charge for the sale of such property to a nonprofit organization or a State pursuant to section 9 of Public Law 100-198 (101 Stat. 1320).

"(7) Subject to the authority, direction, and control of the Secretary, the Chief Medical Director shall be responsible for the management, maintenance, and disposition of property acquired for the purpose of this subsection.

"(8) The Secretary shall prescribe—

"(A) a procedure for establishing reasonable rental rates for persons residing in therapeutic residences; and

"(B) appropriate limits on the period for which such persons may reside in therapeutic residences.

"(9) The Secretary may dispose of any property acquired for the purpose of carrying out this subsection when such property is no longer used for such purpose. The proceeds of disposition of such property shall be credited to the fund.

"(d)(1) There is authorized to be appropriated to the fund for the purposes of carrying out this section, a total of $5,000,000 for fiscal years 1990 through 1994.

"(2) To the extent that less than $5,000,000 is appropriated pursuant to paragraph (1) of this subsection , the Secretary may transfer to the fund, from unobligated amounts in the General Post fund of the Department of Veterans Affairs medical center that will contract for the operation of or operate a therapeutic residence under this section, such amounts as the Secretary determines are necessary, in addition to any amounts so appropriated, to carry out this section.

"(e)(1) Not later than February 1, 1994, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program.

"(2) The report shall include—

"(A) the Secretary's assessment of the effects that transfers of housing to Veterans Health Services and Research Administration under the pilot program have on the Loan Guaranty Revolving Fund established under section 1824(a) of this title and the Home Loan Guaranty Fund established under section 1824A(a) of this title; and

"(B) such recommendations as the Secretary considers appropriate.

"(f) For the purposes of this section—

"(1) the term 'appropriate loan guaranty fund' means (i) in the case of a lease or purchase of a property that had secured a loan that was guaranteed, insured, or made under chapter 37 of this title and was closed or assumed after September 30, 1989, the Home Loan Guaranty Fund established by section 1824A(a) of this title, or (ii) in the case of any other property, the Loan Guaranty Revolving Fund established under section 1824(a) of this title;

"(2) the term 'eligible veteran' means a veteran eligible to receive therapeutic and rehabilitative services under this section;

"(3) the term 'existing compensated work therapy program' means a compensated work therapy program that is being conducted under section 618(b) of this title by a Department of Veterans Affairs medical center on the date of the enactment of the Veterans Benefits and Health Care Act of 1989;

"(4) the term 'fund' means the Special Therapeutic and Rehabilitation Activities Fund established by section 618(c)(1) of this title;

"(5) the term 'nonprofit corporation' means a corporation recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

"(6) the term 'therapeutic residence' means a residential facility in which eligible veterans may reside while participating in a compensated work therapy program conducted pursuant to section 618 of this title and includes real property associated with such facility.

"(g) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 618 the following new item:

"618A. Compensated work therapy and therapeutic residence pilot program.".

(d) NONPROFIT CORPORATIONS FOR VETERANS COMPENSATED WORK THERAPY PROGRAMS.—(1) Chapter 73 is amended by adding at the end the following new subchapter:

"Subchapter VII—Nonprofit Corporations for Veterans Compensated Work Therapy Programs

"§ 4171. Authority to establish; status

"(a) The Secretary may authorize the establishment of one or more nonprofit corporations to provide a flexible funding mechanism for the conduct of Department compensated work therapy programs for veterans (including homeless veterans) in such community or communities as the Secretary may designate. Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

"(b) Any corporation established under this subchapter shall be established solely to facilitate the conduct of compensated work therapy programs for veterans.

"(c) If, by the end of the three-year period beginning on the date of the establishment of a corporation under this subchapter, the corporation is not recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation.

"§ 4172. Funds received by corporations

"(a) Except for sums used as provided in subsection (b) of this section, funds received by a corporation established under this subchapter for the conduct of compensated work therapy programs shall be transferred to the Special Therapeutic and Rehabilitation Activities Fund established under section 618(c) of this title and shall be administered by the Secretary for conducting such programs.

"(b)(1) Subject to paragraph (2) of this subsection, the corporation may use funds referred to in subsection (a) of this section to defray the administrative and fundraising expenses of the corporation.

"(2) Expenditures of the corporation shall be approved in advance in accordance with procedures prescribed by the Secretary.

"§ 4173. Board of directors; executive director

"(a) The Secretary shall provide for the appointment of a board of directors for each corporation established under this subchapter. The board shall include—

"(1) an officer or employee of the Department who—

"(A) is in a field office of the Department in or near the community or communities for which the corporation is established; and

"(B) is involved in the administration of section 618 of this title; and

"(2) representatives of the community or communities for which the corporation is established who are not officers or employees of the Federal Government.

"(b) Each such corporation shall have an executive director who shall be appointed by the board of directors with the concurrence of the Secretary. The executive director of a corporation shall be responsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

"§ 4174. General powers

"A corporation established under this subchapter may—

"(1) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely for the purpose of facilitating the conduct of compensated work therapy programs;

"(2) employ personnel to carry out such purpose; and

"(3) fix the compensation of such personnel.

"§ 4175. Applicable State law

"Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State or States in which the community or communities for which the corporation is established are located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State or States, as the case may be.

"§ 4176. Accountability and oversight

"(a)(1)(A) The records of a corporation established under this subchapter shall be available to the Secretary.

"(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

"(2) Such a corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

"(b) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

"(c) Each member of the board of directors of a corporation established under this subchapter, each employee of such a corporation, and each employee of the Department who is involved in the functions of the corporation during any year—

"(1) shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

"(2) shall submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as is required of Federal employees.

"(d) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and location of corporations established and the amount of the contributions made to each such corporation.

"§ 4177. Report to Congress

"Not later than February 1, 1992, the Secretary shall submit to Congress a report on the experience through the end of fiscal year 1991 under this subchapter. The report shall include such recommendations as the Secretary considers appropriate.

"§ 4178. Expiration of authority

"No corporation may be established under this subchapter after September 30, 1992.

"§ 4179. Definition

"For the purposes of this section, the term 'compensated work therapy program' means any program of therapeutic and rehabilitative activities conducted under section 618 of this title.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

"SUBCHAPTER VII—NONPROFIT CORPORATIONS FOR VETERANS COMPENSATED WORK THERAPY PROGRAMS

"4171. Authority to establish; status.
"4172. Funds received by corporations.
"4173. Board of directors; executive director.
"4174. General powers.
"4175. Applicable State law.
"4176. Accountability and oversight.
"4177. Report to Congress.
"4178. Expiration of authority.
"4179. Definition.".

(e) Availability of the Special Therapeutic and Rehabilitation Activities Fund for Certain Activities.—Section 618(c), as amended by subsection (b), is further amended—

(1) in paragraph (1), by inserting "and for the purpose of carrying out section 618A(c) of this title" before the period at the end of the first sentence; and

(2) in paragraph (2)—

(A) by inserting "and all funds received by the Department as rent under section 618A(c) of this title," in the first sentence after "paragraph (2) of such subsection,"; and

(B) by adding at the end the following: "The Secretary may also distribute out of unobligated amounts in the fund such amounts as may be necessary for the acquisition, management, maintenance, and disposition of real property for the purpose of carrying out section 618A of this title."

(f) CONFORMING AMENDMENT.—Section 618(b) is amended by striking out "therapeutic work" both places it appears and inserting in lieu thereof "compensated work therapy".

SEC. 213. PILOT PROGRAM: NONINSTITUTIONAL ALTERNATIVES TO NURSING HOME CARE.

(a) AUTHORITY TO PROVIDE FOR NONINSTITUTIONAL CARE.—(1) Subchapter II of chapter 17, as amended by section 203(a), is further amended by adding at the end (after the section added by section 203(a)) the following new section:

"§ 620D. Noninstitutional alternatives to nursing home care; pilot program

"(a) During the four-year period beginning on October 1, 1989, the Secretary shall conduct a pilot program for the furnishing of medical, rehabilitative, and health-related services in noninstitutional settings for veterans who—

"(1) are eligible under this chapter for, and are in need of, nursing home care; and

"(2)(A) are in receipt of or in need of nursing home care primarily for the treatment of a service-connected disability; or

"(B) have a service-connected disability rated at 50 percent or more.

"(b)(1) Under the pilot program conducted pursuant to subsection (a), the Secretary shall (A) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (B) in the case of each veteran furnished services under the pilot program, appoint a Department of Veterans Affairs health-care employee to furnish case management services.

"(2) For the purposes of paragraph (1) of this subsection, 'case management' includes the coordination and facilitation of all services furnished to a veteran by the Department of Veterans Affairs, either directly or through contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Department, either directly or through a contract, or by an entity other than the Department) monitoring, reassessment, and followup.

"(c) The Secretary may provide in-kind assistance (through the services of Department of Veterans Affairs employees and the sharing of other Department resources) to a facility furnishing services to veterans under subsection (b)(1)(A) of this section. Any such in-kind assistance shall be provided under a contract between the Department and the facility concerned. The Secretary may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Department receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

"(d) The total cost of providing services or in-kind assistance in the case of any veteran in any fiscal year under the pilot program may not exceed 65 percent of the cost that would have been incurred by the Department during such fiscal year if the veteran had been furnished, instead, nursing home care under section 610 of this title in that fiscal year.

"(e) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.".

(2) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620C the following new item:

"620D. Noninstitutional alternatives to nursing home care; pilot program.".

(b) REPORT.—Not later than February 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the Secretary's evaluation, findings, and conclusions regarding the conduct, through September 30, 1992, of the pilot program required by section 620C of title 38, United States Code (as added by subsection (a)), and the results of the furnishing of care under such pilot program for the participating veterans. The report shall include a description of the conduct of the pilot program (including a description of the veterans furnished services and of the services furnished under the pilot program), and any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate to include in the report.

SEC. 214. PREVENTIVE MEDICINE.

(a) Extension of Pilot Program.—Paragraph (1) of section 663(a) is amended to read as follows:

"(1) In order to carry out the purpose of this subchapter, the Secretary, through fiscal year 1994—

"(A) shall furnish annually at least two preventive health-care services that the Secretary determines to be feasible and appropriate to any veteran being furnished care or services under section 610(a)(1) or 612(a) (1) or (2) of this title; and

"(B) shall implement annually at each Department of Veterans Affairs health-care facility a major preventive health-care and health-promotion initiative for such veterans.".

(b) Limit on Expenditures.—Section 663(c) is amended—

(1) by striking out "or" after "1983,"; and

(2) by striking out the period at the end and inserting in lieu thereof ", more than $16,000,000 in fiscal year 1990, more than $17,000,000 in fiscal year 1991, more than $18,000,000 in fiscal year 1992, more than $19,000,000 in fiscal year 1993, or more than $20,000,000 in fiscal year 1994.".

(c) Director of Preventive Health-Care and Health-Promotion Programs.—Section 663 is amended by adding at the end the following new subsection:

"(d)(1) The Chief Medical Director shall designate an official in the Veterans Health Services and Research Administration to act as the Director of Preventive Health-Care and Health-Promotion Programs.

"(2) The Director of Preventive Health-Care and Health-Promotion Programs shall prepare guidance regarding and be responsible for coordinating and evaluating, and advising the Chief Medical Director on, all activities carried out under this subchapter.".

(d) Reports.—Section 664 is amended to read as follows:

"(a) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

"(1) not later than February 1, 1992, an interim report on the experience under the program provided for by this subchapter; and

"(2) not later than February 1, 1994, a final report on the experience under the program.

"(b) Each report submitted pursuant to subsection (a) of this section shall include, with respect to the experience under the program through September 30 of the year preceding the deadline for submission of such report specified in subsection (a) of this section—

"(1) a description of the types of services that have been furnished pursuant to section 663(a)(1)(A) and the number of veterans who received such services;

"(2) a description of the preventive health-care and health-promotion initiatives that were implemented pursuant to section 663(a)(1)(B) of this title and the number of veterans who have been served through such initiatives;

"(3) a description of the types of preventive health-care services that have been furnished pursuant to sections 610, 612, and 601(6) of this title and the number of veterans who received such services;

"(4) a description of activities conducted pursuant to section 663(a)(2) of this title;

"(5) an assessment of the results of the program; and

"(6) any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate.".

(e) Conforming and Clarifying Amendments.—(1) Section 661(1) is amended by striking out ", including veterans with service-connected disabilities rated at 50 per centum or more and veterans being furnished care or services involving a service-connected disability under this chapter,".

(2) Clauses (1) and (2) of section 662 are amended to read as follows:

"(1) periodic medical and dental examinations (including screenings for high blood pressure, glaucoma, colorectal cancer, and cholesterol);

"(2) patient health education (including education about nutrition, stress management, physical fitness, and smoking cessation);".

SEC. 215. EXTENSION OF AUTHORITY TO FURNISH RESPITE CARE.

(a) In General.—Section 620B(c) is amended by striking out "1989" and inserting in lieu thereof "1991".

(b) Extension of Deadline for Report.—Section 201(b)(2) of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Public Law 99-576;

100 Stat. 3254; 38 U.S.C. 620B note) is amended by striking out "1989" and inserting in lieu thereof "1990".

SEC. 216. PILOT PROGRAM FOR FURNISHING ASSISTIVE ANIMALS TO CERTAIN VETERANS.

(a) Requirement for Pilot Program.—During fiscal years 1990, 1991, 1992, and 1993, the Secretary of Veterans Affairs shall conduct a pilot program under which the Secretary—

(1) shall—

(A) furnish assistive monkeys to quadriplegic veterans who have service-connected disabilities rated 50 percent or more; and

(B) facilitate the furnishing of assistive monkeys to other quadriplegic veterans; and

(2) may—

(A) furnish service dogs to quadriplegic veterans who have service-connected disabilities rated 50 percent or more; and

(B) facilitate the furnishing of service dogs to other quadriplegic veterans.

(b) Selection of Veteran-Participants.—(1) In determining whether to furnish an assistive animal to a veteran, or to facilitate the furnishing of an assistive animal to a veteran, under the pilot program, the Secretary shall (A) consider the extent to which the veteran needs and can benefit from the assistance of the animal, and (B) provide a preference for veterans who have service-connected quadriplegia.

(2) The Secretary shall approve a veteran for participation in the pilot program only upon the Secretary's determination that the veteran is well-suited for—

(A) carrying out the responsibilities involved in the care of the animal; and

(B) effectively using the animal for assistance in performing the veteran's daily living tasks.

(c) Administrative Matters.—(1) The Secretary is authorized to enter into contracts for the furnishing of assistive monkeys under subsection (a)(1). Under such contracts the Secretary may make advance payments for the furnishing of the monkeys before receipt of the monkeys and may either reimburse the provider of such monkeys for the costs of training the monkeys or, subject to such terms and conditions as the Secretary determines necessary to protect the interests of the Government, make advance payments for such costs before the costs are incurred.

(2) Ownership of an assistive animal furnished to a veteran under the pilot program shall be determined in accordance with a contract between the provider of the animal and the veteran.

(3) The Secretary shall provide for the protection of the welfare of assistive animals furnished veterans under the pilot program.

(d) Evaluation and Report.—(1) The Secretary shall evaluate the conduct of the pilot program, the nature and extent of the benefit to veterans furnished assistive monkeys or service dogs under the program (including any benefits related to employment), the costs and cost-effectiveness of furnishing such monkeys or dogs to quadriplegic veterans, and the effects of such program on the recruitment and retention of paid primary caregivers for veterans receiving monkeys or dogs and on the morale of unpaid primary caregivers for such veterans.

(2) Not later than February 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program. The report shall contain—

(A) the results of the evaluation carried out under paragraph (1), including descriptions of the procedures and criteria used to select veterans to receive assistive monkeys or service dogs, the nature and extent of the benefit that the veterans received from the assistance of such monkeys or dogs, and the amounts and types of costs incurred by the Department of Veterans Affairs in the conduct of the program;

(B) the Secretary's views on the relationship between the furnishing of an assistive monkey or service dog to a veteran and the payment to a veteran of (i) an aid and attendance allowance under section 314(r) of title 38, United States Code, or (ii) an annual rate of pension under section 521 of such title based on the veteran's need of regular aid and attendance; and

(C) any recommendations that the Secretary considers appropriate regarding whether the pilot program should be continued or whether the authority to furnish assistive monkeys or service dogs, or both, to quadriplegic veterans should be made permanent.

(e) Definitions.—For the purposes of this section—

(1) the terms "veteran" and "service-connected" have the meanings given those terms in paragraphs (2) and (16), respectively, of section 101 of title 38, United States Code;

(2) the terms "assistive monkey" and "service dog" mean a monkey or dog, respectively, that is specially trained to assist in the performance of daily living tasks for quadriplegic individuals; and

(3) the term "assistive animal" means an assistive monkey or a service dog.

SEC. 217. SIGNAL DOGS FOR CERTAIN DISABLED VETERANS.

(a) AUTHORITY TO PROVIDE SIGNAL DOGS.—Section 614 is amended by adding at the end the following new subsection:

"(c)(1) The Secretary may provide signal dogs to veterans who have service-connected hearing impairments and are in need of the assistance of such dogs and may pay travel and incidental expenses, under the terms and conditions set forth in section 111 of this title, for travel to and from their homes that are incurred in becoming adjusted to such signal dogs.

"(2) For the purposes of this subsection, the term 'signal dog' means a dog specially trained to provide hearing assistance to deaf persons.".

(b) TECHNICAL CORRECTIONS.—Section 614(b) is amended by striking out "(under the terms and conditions set forth in section 111 of this title) to and from their homes and" and inserting in lieu thereof ", under the terms and conditions set forth in section 111 of this title, for travel to and from their homes that are".

SEC. 218. STATE HOME CONSTRUCTION GRANTS.

Section 5033(a) is amended in the first sentence by striking out "September 30, 1989" and inserting in lieu thereof "September 30, 1992".

SEC. 219. PROSTHETIC SERVICES REPORT.

Not later than January 15, 1990, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(1) the Secretary's evaluation of the reasons for the backlog that occurred in the procurement of prosthetic appliances in fiscal year 1989, and for the failure to furnish prosthetic appliances in accordance with the priority established in section 612(i) of title 38, United States Code; and

(2) a description of the actions that the Secretary has taken and plans to take to prevent a recurrence of—

(A) the failure to furnish prosthetic appliances in accordance with such priority, including a schedule for any such planned actions; and

(B) the accumulation of a significant backlog in the procurement of prosthetic appliances.

SEC. 220. OUTPATIENT DENTAL CARE.

Section 612(b) is amended—

(1) in paragraph (1)—

(A) by striking out "or" at the end of clause (F);

(B) by striking out the period at the end of clause (G) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following new clause:

"(H) for which the furnishing of such services, treatment, or appliances is medically necessary in preparation for hospital admission."; and

(2) in paragraph (3), by striking out "$500" and inserting in lieu thereof "$1,000".

SEC. 221. REIMBURSEMENT FOR EMERGENCY CARE OF VOCATIONAL REHABILITATION PARTICIPANTS.

Section 628(a)(2)(D) is amended by striking out "found to be" and all that follows through "rehabilitation training and" and inserting in lieu thereof "(i) a participant in a vocational rehabilitation program (as defined in section 1501(9) of this title), and (ii)".

SEC. 222. REPEAL OF AUTHORITY TO FURNISH TOBACCO TO VETERANS RECEIVING HOSPITAL OR DOMICILIARY CARE.

(a) IN GENERAL.—Section 615 is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by striking out the item relating to section 615.

SEC. 223. SHARING OF SPECIALIZED MEDICAL RESOURCES.

(a) EXPANSION OF PURPOSE.—Section 5051 is amended by striking out "hospitals" both places it appears in the first sentence and inserting in lieu thereof "health-care facilities".

(b) EXPANSION OF AUTHORITY.—Section 5053 is amended—

(1) in subsection (a)—

(A) by striking out "hospitals" the first place it appears and all that follows through "community" and inserting in lieu thereof "health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools"; and

(B) by striking out the last sentence; and

(2) in subsection (b)—

(A) in the first sentence, by striking out "charge" and all that follows and inserting in lieu thereof "methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved."; and

(B) in the second sentence, by inserting before the period at the end "and to funds that have been allotted to the facility that furnished the resource involved".

SEC. 224. DEVELOPMENT OF RECOMMENDED LEGISLATION FOR THE ELIMINATION OF INCONSISTENCIES IN CERTAIN VETERANS BENEFITS LAWS.

(a) REQUIREMENT TO ESTABLISH TASK FORCE.—The Secretary of Veterans Affairs shall establish a task force to recommend policies and legislation for the elimination of inconsistencies among provisions of law relating to veterans' eligibility for certain health-care benefits.

(b) COMPOSITION OF TASK FORCE.—The task force shall be composed of the following:

(1) Employees of the Department of Veterans Affairs involved in the administration of programs affected by the inconsistencies in law referred to in subsection (a).

(2) Representatives of organizations concerned with the administration of such programs, as determined by the Secretary.

(c) RESPONSIBILITIES OF TASK FORCE.—The task force shall—

(1) identify inconsistencies among sections 601(6), 612, 614, 617, and 619 of title 38, United States Code, and the implementation of such sections;

(2) after consultation with appropriate representatives of veterans, develop policy recommendations and legislative proposals for the elimination of any such inconsistencies; and

(3) not later than the date specified by the Secretary, submit to the Secretary a report containing (A) descriptions of the inconsistencies identified by the task force, (B) the policies and legislative proposals recommended by the task force for the elimination of such inconsistencies, and (C) the reasons for each such recommendation.

(d) ACTION BY THE SECRETARY.—The Secretary shall review the report submitted by the task force and either approve the recommendations for legislation contained in the report [disapprove such recommendations and either?] prepare alternative legislative proposals that the Secretary considers appropriate for the elimination of the inconsistencies identified by the task force or decline to recommend any alternative legislative proposals.

(e) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

(1) the report submitted to the Secretary by the task force; and

(2) a report containing—

(A) any legislation recommended by the Secretary for the elimination of the inconsistencies identified by the task force;

(B) an analysis of any legislation recommended by the Secretary; and

(C) the reasons for any differences between any legislation recommended by the Secretary and the legislation recommended by the task force.

PART C—HEALTH-CARE PERSONNEL

SEC. 250. SHORT TITLE.

This part may be cited as the "Veterans Health-Care Personnel Act of 1989".

SEC. 251. PAY RATES FOR NURSES AND OTHER HEALTH-CARE PROFESSIONALS IN CERTAIN POSITIONS.

(a) IN GENERAL.—(1) Chapter 73 is amended by inserting after section 4107 the following new section:

"§ 4107A. Competitive pay rates for certain nurse and other health-care professional positions

"(a)(1) It is the purpose of this section to ensure, by a means providing maximum flexibility to directors of Department of Veterans Affairs health-care facilities, that the rates of basic pay for health-care professional positions described in paragraph (2) of this subsection in each such facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for such health-care facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-care facilities in the recruitment and retention of qualified personnel for such positions.

"(2) The health-care professional positions referred to in paragraph (1) of this subsection are registered nurse positions, registered nurse anesthetist positions, certified registered nurse anesthetist positions, and the positions for such other health-care professionals referred to in clauses (1) and (3) of section 4104 of this title as the Secretary may determine upon the recommendation of the Chief Medical Director.

"(b) The Secretary shall ensure that, for pay periods beginning on or after July 1, 1990, the rates of basic pay for covered positions in the Department are established in accordance with this section instead of section 4107(b)(1) of this title.

"(c)(1) Not later than June 1, 1990, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

"(A) conduct a survey in accordance with this subsection; and

"(B) on the basis of such survey, establish the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out the purpose of this section.

"(2) The rates of basic pay established pursuant to paragraph (1) of this subsection shall become effective beginning with the first pay period that begins on or after July 1, 1990.

"(3) Not later than December 1 of each year after 1989, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

"(A) conduct a survey in accordance with this subsection; and

"(B) on the basis of such survey—

"(i) determine whether it is necessary to adjust the rates of basic pay for such covered positions at such facility in order to carry out the purpose of this section; and

"(ii) effective with the first pay period that begins on or after January 1 of the next year, adjust the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out such purpose.

"(4)(A) In the case of the covered positions in each category of covered positions in a Department health-care facility, the director of that facility shall survey the entry-level compensation established for the corresponding health-care professional positions in comparable non-Department health-care facilities within the same labor market area as that Department health-care facility. The Secretary shall specify in regulations the criteria for determining the number of comparable non-Department health-care facilities to be included in the survey.

"(B) If the number of non-Department health-care facilities comparable to a Department health-care facility in the same labor market area is less than the number determined in accordance with the criteria specified pursuant to subparagraph (A) of this paragraph or is less than the director of that Department health-care facility considers necessary in order to produce a valid comparison, such director shall, in the case of the covered positions referred to in such subparagraph, survey—

"(i) the entry-level compensation established for the corresponding health-care professional positions in such comparable non-Department health-care facilities as are located within that labor market area; and

"(ii) the entry-level compensation established for the corresponding health-care professional positions in other non-Department health-care facilities within that labor market area.

"(C) For the purposes of this paragraph, a non-Department health-care facility is comparable to a Department health-care facility if the director of the Department health-care facility determines, in accordance with regulations prescribed by the

Secretary, that the non-Department health care facility (i) is in direct competition with the Department health-care facility for the recruitment and retention of personnel qualified for employment in covered positions, and (ii) has other characteristics that are comparable to the characteristics of a Department health-care facility.

"(5)(A) Except as provided in subparagraph (B) of this paragraph, the director of a Department health-care facility shall ensure that an appropriate cost-of-living adjustment is provided for in adjustments of rates of pay that are made for years following 1990 pursuant to a survey under this subsection.

"(B) The director of a Department health-care facility may waive, in whole or in part, with respect to any rate of basic pay for a covered position the cost-of-living component of any adjustment for any year in which the cost-of-living adjustment is not necessary, in whole or in part (as the case may be), in order for that rate of pay to be competitive.

"(d)(1) If the director of a Department health-care facility determines in any year that, because of an insufficiency in the number of non-Department health-care facilities or non-Department covered positions, a survey under subsection (c) of this section would not provide a valid comparison with respect to the covered positions in the director's facility, the director shall establish or adjust the rates of basic pay for the covered positions in the director's facility as provided in this subsection instead of subsection (c) of this section.

"(2) Not later than 90 days before the date on which the director of a Department health-care facility establishes or adjusts rates of basic pay pursuant to paragraph (1) of this subsection, the director shall—

"(A) identify a labor market area that is similar to the labor market area of such facility and includes a Department health-care facility; and

"(B) notify the Chief Medical Director of the labor market identified pursuant to clause (A) of this paragraph.

"(3) The director of a health-care facility referred to in paragraph (1) of this subsection shall prescribe the same rates of basic pay for the covered positions in the director's facility as are prescribed for the same covered positions in the Department health-care facility located in the identified labor market area unless the selection of that labor market area for the purpose of this subsection is disapproved by the Chief Medical Director in accordance with paragraph (5) of this subsection.

"(4) If the Chief Medical Director disapproves (in accordance with paragraph (5) of this subsection) the selection of a labor market area by the director of a health-care facility for the purpose of this subsection, the director of that facility shall prescribe the same rates of basic pay for the covered positions in that facility as are prescribed for the Department health-care facility in a labor market area which the Chief Medical Director shall designate. The Chief Medical Director may designate any labor market area that the Chief Medical Director determines to be similar to the labor market area of the director's health-care facility.

"(5) Not later than 60 days after receiving a notification from the director of a Department health-care facility under paragraph (2)(B) of this subsection, the Chief Medical Director shall—

"(A) approve the selection of the labor market area identified in the notification; or

"(B) disapprove the selection of that labor market area, designate another labor market area determined by the Chief Medical Director to be similar to the labor market area of the director's health-care facility, and notify that facility director of that designation.

"(6) In order for a labor market area to be determined similar to the labor market area of a Department health-care facility for the purposes of this subsection, both labor market areas must be similar in size, demographic characteristics, and labor market characteristics.

"(e)(1) When the director of a Department health-care facility establishes or adjusts the rates of basic pay for a grade for any category of positions at such facility in order to carry out the purpose of this section, the director shall specify the minimum rate of basic pay for such grade and, subject to paragraph (3) of this subsection, increase or reduce the other rates of basic pay for such grade to amounts that bear the same relationship to the specified minimum rate of basic pay and to each other as the rates of basic pay within such grade bear to each other before the increase or reduction, as the case may be.

"(2) The minimum rate of basic pay prescribed for a grade for the positions in any category of covered positions in a Department health-care facility on the basis of a survey conducted under subsection (c) of this section shall be sufficient for the pay and other employee benefits of the health-care professionals employed in such positions in such grade to be competitive with the entry-level compensation (but may not exceed the highest rate of entry-level pay established) for the corresponding health-care professional positions in non-Department health-care facilities in the same labor market area, as ascertained by the director of such facility in such survey.

"(3)(A) Except as provided in subparagraph (C) of this paragraph, the maximum rate of basic pay for any grade designated by the Secretary, upon the recommendation of the Chief Medical Director, as the entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for grade 13 of the General Schedule under section 5332 of title 5.

"(B) The maximum rate of basic pay for any grade other than an entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for a position in level V of the Executive Schedule under section 5316 of title 5.

"(C) The limitation prescribed by subparagraph (A) of this paragraph shall not apply to the entry-level grade for any category of covered positions if the positions have been designated by the Chief Medical Director as supervisory or managerial positions. The maximum rate prescribed by subparagraph (B) of this paragraph shall apply to such entry-level grade.

"(4) Whenever a grade is added to the schedule of grades for covered positions in any category of covered positions or a step within grade is added to a grade in such schedule, the director of a Department health-care facility shall establish the rates of basic pay for that grade or the rate of pay for that step, as the case may be, in the same manner as the rates of pay are established and adjusted under the other provisions of this subsection. The rates of basic pay for the additional grade shall bear the same relationship to the minimum rate of basic pay specified for such grade and to each other as the rates of basic pay within each other grade in such schedule bear to each other. The rate of pay for an additional step within grade shall bear the same relationship to the other rates of basic pay within such grade as such other rates bear to each other.

"(f) An employee who is paid a rate of basic pay established under this section and who is transferred (voluntarily or otherwise) from a covered position in one Department health-care facility to a covered position in another Department health-care facility shall be paid the rate of basic pay in effect for the covered position at the health-care facility to which the employee is transferred for the same grade and the same step within that grade as was applicable to that employee immediately before the transfer, if the Chief Medical Director determines that the duties of the position to which the employee is transferred are at least comparable to the duties of the position from which the employee was transferred.

"(g)(1) Rates of basic pay may be increased or reduced under this section.

"(2) A reduced rate of basic pay established for a covered position under this subsection shall not apply to an employee serving in such position at a Department health-care facility on the day before the effective date of the reduced rate. That employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to that employee on such day for as long as the employee continues to serve in such position at such facility.

"(h)(1) In developing the criteria for the conduct of surveys under subsection (c) for application by all Department health-care facilities, the Secretary shall consult with representatives of each labor organization accorded exclusive recognition under chapter 71 of title 5 for a unit that includes employees whose rates of pay are to be established on the basis of such surveys.

"(2) In the case of employees in covered positions in a unit in a particular Department health-care facility with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, the director of the health-care facility shall consult with the representatives of such labor organization on—

"(A) the criteria developed by the director of that health-care facility for the conduct of surveys under subsection (c);

"(B) the director's plans for the collection of data in conducting surveys; and

"(C) the determinations regarding specific rates of basic pay.

"(i) The establishment and adjustment of rates of basic pay under this section for covered positions does not limit the authority of the Secretary to pay bonuses under section 4120 of this title to employees appointed to such positions.

"(j)(1) Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the exercise of the authority provided in this section for the immediately preceding calendar year.

"(2) The report shall contain an assessment of the effects of the exercise of such authority on the ability of the Department to recruit and retain qualified health-care professionals for covered positions. The Secretary shall include in the report recommendations for such additional legislation to facilitate the recruitment and retention of qualified health-care professionals for such positions as the Secretary considers necessary or appropriate.

"(3) If the authority provided in this section was exercised for the year covered by the report only to adjust the rates of basic pay for nurse positions, the report shall also contain the reasons that rates of basic pay were not adjusted for other health-care professional positions under such authority for such year and any plans for adjusting the rates of basic pay for other health-care professional positions under such authority.

"(k)(1) The Secretary, upon the recommendation of the Chief Medical Director, shall prescribe regulations setting forth criteria and procedures to carry out this section. Such regulations shall provide maximum flexibility for the director of each Department health-care facility. Documentation requirements in such regulations shall be minimal.

"(2) If the Secretary fails to prescribe final regulations under this subsection before April 1, 1990, the Secretary shall, not later than such date, prescribe interim final regulations for the purposes of this subsection. Such regulations shall be effective upon issuance and shall remain in effect until the effective date of final regulations issued for the purposes of this subsection.

"(3) If neither final regulations nor interim final regulations are prescribed under this subsection before April 1, 1990, the director of each Department health-care facility shall, nevertheless, make determinations and establish and adjust rates of basic pay under this section with respect to covered positions in such facility for 1990 and subsequent years. In the case of any determination or other action which is subject to criteria or procedures to be prescribed in such regulations, the director of each such facility shall apply such criteria and follow such procedures as the director considers appropriate and consistent with this section. Each such director shall apply the final regulations when issued.

"(l) Information collected in surveys conducted under this section are not subject to disclosure under section 552 of title 5.

"(m) For the purposes of this subsection—

"(1) the term 'covered position' means a position referred to in subsection (a)(1) of this section;

"(2) the term 'health-care facility' means a hospital or an independent outpatient clinic;

"(3) the term 'entry-level compensation', with respect to corresponding health-care professional positions in non-Department health-care facilities, means—

"(A) the minimum rate of pay established for professionals in such positions who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care professionals employed in the same category of Department covered positions; and

"(B) the other pecuniary employment benefits, if any, provided for the non-Department health-care professionals paid such minimum rate of pay; and

"(4) the term 'corresponding', with respect to health-care professional positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care professional positions in Department health-care facilities.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4107 the following new item:

"4107A. Competitive pay rates for certain nurse and other health-care professional positions.".

(b) RELATIONSHIP OF PAY RATES TO ADDITIONAL PAY.—Section 4107(e)(1) is amended by striking out "in subsection (b)(1) of this section".

(c) GRADES FOR NURSE PAY SCHEDULE.—(1) Section 4107(b)(1) is amended by striking out the items under the heading "NURSE SCHEDULE" and inserting in lieu thereof the following:

"Three or more grades, as prescribed by the Chief Medical Director pursuant to paragraph (3) of this subsection.".

(2) Section 4107(b) is amended by adding at the end the following new paragraph:

"(3) The Chief Medical Director shall prescribe the number of grades and the number of steps within grades for nurse positions.".

(d) INTERIM COMPETITIVE PAY RATES.—(1) The director of each Department of Veterans Affairs health-care facility located in a rural area—

(A) shall, not later than December 1, 1989, conduct a survey consistent with the provisions of section 4107A(c) of title 38, United States Code (as added by subsection (a)); and

(B) pursuant to the authority provided in section 4107(g) of such title (as amended by section 255)—

(i) shall decide, not later than January 1, 1990, on the basis of the survey referred to in clause (A), whether to adjust, on a local basis, the rates of basic pay for nurses employed by the Department of Veterans Affairs; and

(ii) if deciding to adjust such rates on a local basis, shall adjust such rates effective for pay periods beginning after January 1, 1990, and before July 1, 1990.

(2) In conducting the survey referred to in paragraph (1), the director of a health-care facility located in a rural area shall include in such survey the rates of pay paid to nurses who reside in such area, who are employed in a health-care facility located outside such area, and who commute to work from such area to such health-care facility, if the director determines that the number of nurses who commute to work outside the area adversely affects the ability to employ nurses in the health-care facility of the director.

(3) For the purposes of this subsection—

(A) the term "health-care facility" has the meaning given such term in section 4107A(l) of title 38, United States Code (as added by subsection (a)); and

(B) the term "rural area" means a geographic area that the Secretary determines, upon the recommendation of the Chief Medical Director, to be a rural area.

(e) First Report.—The first report under section 4107A(j) of title 38, United States Code (as added by subsection (a)), shall be submitted not later than March 1, 1991.

SEC. 252. EMPLOYMENT OF PERSONNEL TRAINED BY THE DEPARTMENT OF VETERANS AFFAIRS.

Section 4106 is amended by adding at the end the following new subsection:

"(h)(1) Notwithstanding subchapter I of chapter 33 of title 5, the Secretary, upon the recommendation of the Chief Medical Director, may appoint in the competitive service under such title any individual who—

"(A) has been awarded a degree or certificate in a health-care profession or occupation by an accredited institution;

"(B) has been appointed by the Secretary to participate in a clinical education program conducted by an educational institution affiliated with the Department health-care facility; and

"(C) within one year before that individual's appointment in the competitive service, has successfully completed such clinical education program.

"(2) In making appointments to the competitive service under this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.".

SEC. 253. DIRECTOR PAY.

Section 4107(b)(2) is amended by inserting "or is a physician or dentist serving in a comparable position in the central office of the Veterans Health Services and Research Administration" before the period at the end of the first sentence.

SEC. 254. OVERTIME RATES OF PAY FOR CERTAIN NURSES.

(a) In General.—Section 4107(e)(5) is amended by striking out the first sentence and inserting in lieu thereof the following: "A nurse who performs officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service. The rate of overtime pay for such nurse shall be one and one-half times such nurse's hourly rate of basic pay.".

(b) Effective Date.—The amendment made by subsection (a) shall take effect with respect to overtime service performed on or after October 1, 1989.

SEC. 255. ADDITIONAL PAY FOR HEAD NURSES.

(a) In General.—Section 4107(e) is amended by adding at the end the following new paragraph:

"(11) A nurse shall be paid additional pay equal to 6 percent of the nurse's hourly rate of basic pay for each hour of service performed as a head nurse. The preceding sentence shall not apply to a nurse who is assigned to perform service as a head nurse for a period of less than 30 consecutive days.".

(b) Relationship to Basic Pay.—Paragraph (1) of section 4107(e) is amended by inserting "and paragraph (11)" after "(8)".

(c) Computation of Hourly Rate of Pay.—Paragraph (6) of section 4107(e) is amended by striking out "or (5)" and inserting in lieu thereof "(5), or (11)".

(d) **Relationship to Other Additional Pay.**—Paragraph (7) of section 4107(e) is amended by striking out "or (5)" and inserting in lieu thereof "(5), or (11)".

(e) **Additional Pay as Head Nurse To Be Counted for Certain Benefits.**—Paragraph (9) of section 4107(e) is amended by inserting ", other than pay under paragraph (11) of this subsection," after "this subsection".

(f) **Technical Amendment.**—Paragraph (9) of section 4107(e) is further amended by inserting "84," after "83,".

(g) **Effective Date.**—The amendments made by subsections (a) through (d) shall take effect with respect to service performed as a head nurse on or after October 1, 1989.

SEC. 256. PAY ENHANCEMENTS FOR CERTAIN HEALTH-CARE PERSONNEL.

Section 4107(f) is amended by striking out "or occupational therapists," and inserting in lieu thereof "occupational therapists, or any other health-care personnel furnishing direct care to patients or providing services incident to the furnishing of direct care to patients,".

SEC. 257. SPECIAL RATES CAP AND APPROVAL.

(a) **Increase in Limitation.**—Section 4107(g)(3) is amended—

(1) by inserting "(A)" after "(3)";

(2) by inserting "by two times" after "exceed" the first place it appears; and

(3) by inserting at the end the following new subparagraph:

"(B) Whenever the amount of an increase under paragraph (1) of this subsection results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under subparagraph (A) of this paragraph, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.".

(b) **Approval of Special Rates of Pay.**—Section 4107(g)(4) is amended—

(1) in the first sentence, by striking out "ninety" and inserting in lieu thereof "45"; and

(2) by adding at the end the following new sentence: "If, prior to such effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.".

SEC. 258. ELIMINATION OF REDUCTION IN RETIRED OR RETAINER PAY.

Section 4107(i) is amended by striking out "which result" and all that follows and inserting in lieu thereof "which—

"(1) result from a severe shortage of well-qualified candidates in (A) physician positions, (B) positions of health-care professionals involved in providing direct patient care, or (C) positions of personnel involved in providing services incident to direct patient care; and

"(2) cannot otherwise be readily met.".

SEC. 259. AWARDS FOR RECERTIFICATION.

Section 4107 is amended by adding at the end the following new subsection:

"(k)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall pay each nurse who is recertified in the speciality in which the nurse is employed a lump-sum payment equal to 1 percent of the annual salary of the nurse (as of the time the nurse is recertified). The Secretary shall make such payment when the nurse is recertified.

"(2) A payment may not be paid to a recertified nurse under this subsection if the performance rating for such nurse for the latest rating period ending before the date of the recertification is less than satisfactory.

"(3) A special payment under this subsection shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this title.".

SEC. 260. COVERAGE OF VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION PERSONNEL BY FEDERAL EMPLOYEES' COLLECTIVE BARGAINING PROCEDURES.

Section 4108 is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

(2) by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department of Veterans Affairs";

(3) by striking out "Department of Medicine and Surgery" each place it appears and inserting in lieu thereof "Veterans Health Services and Research Administration";

(4) in subsection (a), by inserting "except as provided in subsection (e) of this section," after "Notwithstanding any law, Executive order, or regulation,";

(5) in subsection (c)(2), by striking out "non-Veterans' Administration" and inserting in lieu thereof "non-Department of Veterans Affairs";

(6) in subsection (d), by inserting "except as provided in subsection (e) of this section," after "Notwithstanding any other provision of law,"; and

(7) by adding at the end the following new subsection:

"(e) The provisions of chapter 71 of title 5 shall apply to the exercise of the Secretary's authority under this section except with respect to—

"(1) the prohibitions set out in paragraphs (1) through (6) of subsection (a) of this section; and

"(2) the matters covered by section 4110 of this title.".

SEC. 261. DISCIPLINARY ACTIONS AND GRIEVANCES.

Section 4110 is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a)(1) The Chief Medical Director, under regulations prescribed by the Secretary, shall from time to time appoint disciplinary boards to determine, upon notice and fair hearing, the charges in any disciplinary action brought against a person employed in a position listed in paragraph (1) of section 4104 of this title (hereafter in this section referred to as the 'respondent') on the basis of the performance or conduct of the respondent during employment with the Department of Veterans Affairs.

"(2) A disciplinary board appointed in the case of any respondent shall consist of not less than three nor more than five employees of the Veterans Health Services and Research Administration who are senior in grade to the respondent. The majority of the members of such board shall be employed in the same category of position as the respondent.

"(3) The Chief Medical Director may delegate the performance of the function of appointing a disciplinary board to an employee of the Veterans Health Services and Research Administration who is not involved in deciding whether to file charges to be determined by the board and who is not subordinate to any official involved in making such decision.";

(2) in subsection (b), by striking out "Administrator" and inserting in lieu thereof "Secretary";

(3) in subsection (d)—

(A) in the first sentence, by striking out "Administrator" and all that follows and inserting in lieu thereof "Secretary that the proposed disciplinary action be sustained or modified within limitations prescribed by the Secretary.";

(B) in the second, third, and fourth sentences, by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

(4) in subsection (e), by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary"; and

(5) by adding at the end the following:

"(f)(1) A disciplinary board is not required in the case of a disciplinary action if the proposed action is suspension for 14 days or less, reassignment without a reduction in basic pay, reduction in rank without a reduction in basic pay, reprimand, or admonishment.

"(2) An employee against whom a disciplinary action described in paragraph (1) of this subsection is proposed to be taken shall be entitled to—

"(A) an advance written notice stating the specific reasons for the proposed action;

"(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(C) representation by an attorney or other spokesperson; and

"(D) a written decision and the specific reasons for the decision at the earliest practicable date.

"(3) Disciplinary actions described in paragraph (1) of this subsection shall be subject to review under either the provisions of section 4110A of this title (in the case of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5) or an agency review procedure to be established by the Secretary (in the case of such employees who are not members of such a unit). Any such agency review procedure established by the Secretary shall include—

"(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

"(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the Department of Veterans Affairs;

"(C) a prompt report of the findings and recommendations by the impartial examiner; and

"(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the Department on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.".

(b) GRIEVANCES.—(1) Subchapter I of chapter 73 is amended by inserting after section 4110 the following new section:

"§ 4110A. Grievances and certain disciplinary reviews

"(a)(1) The Secretary shall authorize review of Department of Veterans Affairs actions on the following matters under procedures established by collective bargaining in accordance with the provisions of chapter 71 of title 5:

"(A) Grievances of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5.

"(B) Subject to paragraph (2) of this subsection, disciplinary actions described in subsection 4110(f)(1) of this title involving such employees.

"(2) In the case of a review of a disciplinary action involving any question of clinical competence, as determined by either party, any person selected to serve as an arbitrator in such case under procedures established as provided in paragraph (1) of this subsection must be qualified as an arbitrator and must also be (A) qualified as a physician, dentist, or nurse, or (B) otherwise qualified, by specialized experience or training or both, in examining and adjudicating health-care issues.

"(b) For the purpose of resolving grievances of supervisors and employees appointed under authority of this chapter who are not members of a unit determined appropriate under section 7112 of title 5, the Secretary shall authorize review of action of the Department on such grievances pursuant to a Department review procedure established by the Secretary under section 4110(f)(3) of this title.".

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 4110 the following new item:

"4110A. Grievances and certain disciplinary reviews.".

SEC. 262. LEAVE TRANSFERS AND BANKS.

(a) IN GENERAL.—Section 4108, as amended by section 260(7), is further amended by adding at the end (after subsection (e), as added by section 260(7)) the following new subsection:

"(f)(1) The Secretary—

"(A) shall, subject to paragraph (6) of this subsection, establish a voluntary leave transfer program for the benefit of health-care professionals referred to in the matter preceding clause (1) of subsection (a) of this section; and

"(B) may establish a voluntary leave bank program for the benefit of such health-care professionals.

"(2) To the maximum extent feasible—

"(A) the voluntary leave transfer program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

"(B) any voluntary leave bank program established pursuant to paragraph (1)(B) of this subsection shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

"(3) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) of this subsection to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5.

"(4) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) of this subsection to participate in any voluntary leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5.

"(5) Participation of such health-care professionals in a voluntary leave transfer program or a voluntary leave bank program pursuant to an agreement entered into under paragraph (3) or (4) of this subsection shall be subject to such requirements and conditions as may be prescribed in such agreement.

"(6) The Secretary is not required to establish a voluntary leave transfer program for any personnel permitted to participate in a voluntary leave transfer program pursuant to an agreement referred to in paragraph (3) of this subsection.".

(b) IMPLEMENTATION REQUIREMENT.—The Secretary of Veterans Affairs shall implement the programs provided for in subsection (e) of section 4108 of title 38, United States Code (as added by subsection (a)), not later than October 1, 1990.

SEC. 263. TEMPORARY APPOINTMENTS OF HEALTH-CARE PERSONNEL.

Section 4114(a)(3) is amended—

(1) in subparagraph (A), by striking out the penultimate sentence and inserting in lieu thereof the following: "Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing approved by the Secretary or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized education or training institution approved by the Secretary and who are pending registration or licensure in a State, or certification by a national board recognized by the Secretary, shall not exceed two years."; and

(2) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) A student who has a temporary appointment under this paragraph and who is pursuing a full course of nursing in a recognized school of nursing approved by the Secretary or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized education or training institution approved by the Secretary may be reappointed for a period not to exceed the duration of such student's academic program.".

SEC. 264. HEALTH-CARE PROFESSIONALS CASH AWARDS.

(a) AUTHORITY TO PAY CASH AWARDS.—(1) Subchapter I of chapter 73 is amended by inserting after section 4120 the following new section:

"§ 4120A. Performance awards and cash awards

"(a)(1) The Secretary shall pay—

"(A) performance awards under section 5406 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers; and

"(B) cash awards under section 5407 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers in grades GS–13 through GS–15 of the General Schedule.

"(2) The Secretary may pay performance awards under section 5406 of title 5 to Department employees described in section 4104 of this title who are not supervisors or managers.

"(b) In the application of section 5406(c)(1) of title 5 to the payment of performance awards under subsection (a), the reference to employees covered by the performance management and recognition system shall be deemed to refer to the employees who are covered by paragraph (1)(A) of such subsection and the employees whom the Secretary elects to cover pursuant to paragraph (2) of such subsection.

"(c) The Secretary shall prescribe in regulations the criteria for making performance awards under subsections (a)(1)(A) and (b) of this section.

"(d) Determinations of which employees are supervisors or managers shall be made in accordance with the regulations prescribed to carry out this section, except that for purposes of this section head nurses shall be considered supervisors.

"(e) A cash award under this section shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4120 the following new item:

"4120A. Performance awards and cash awards.".

(b) EFFECTIVE DATE.—(1) The amendments made by subsection (a) shall take effect on October 1, 1990.

(2) Awards may be made under section 4120A of title 38, United States Code (as added by subsection (a)), only for service performed on or after October 1, 1989.

SEC. 265. DEPENDENT CARE ASSISTANCE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Subchapter I of chapter 73, as amended by section 264, is further amended by inserting after section 4120A the following new section:

"§ 4120B. Dependent care assistance

"The Secretary shall establish and conduct a dependent care assistance program, which meets the requirements of section 129 of the Internal Revenue Code of 1986, for the care of dependents of employees in the Veterans Health Services and Research Administration.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 201, is further amended by inserting after the item relating to section 4120A the following new item:

"4120B. Dependent care assistance.".

(c) IMPLEMENTATION REQUIREMENT.—The Secretary of Veterans Affairs shall implement the program provided for in section 4120B of title 38, United States Code (as added by subsection (a)), not later than June 1, 1990.

SEC. 266. HEALTH PROFESSIONAL SCHOLARSHIPS.

(a) APPLICANT PRIORITY AND EQUITABLE ALLOCATION FOR NURSING DEGREE APPLICANTS.—Section 4312(b)(5) is amended to read as follows:

"(5) In selecting applicants for the Scholarship Program, the Secretary shall—

"(A) give priority to applicants who will be entering the final year in a course of training; and

"(B) ensure an equitable allocation of scholarships to persons enrolled in the second year of a program leading to an associate degree in nursing.".

(b) IMPLEMENTATION REQUIREMENT.—The Secretary of Veterans Affairs shall provide for the implementation of the amendment made by subsection (a) beginning with scholarships awarded under section 4312 of title 38, United States Code, in 1990.

SEC. 267. ASSISTANCE TO HEALTH-PERSONNEL EDUCATIONAL INSTITUTIONS.

(a) DEVELOPMENT OF NEW HEALTH CAREERS.—Section 5091 is amended by inserting "(in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved)" after "paramedical personnel, and".

(b) AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—(1) Subchapter III of chapter 82 is amended by adding at the end the following new section:

"§ 5094. Authorization of appropriations

"(a) There is authorized to be appropriated for the purpose of making grants under this subchapter $5,000,000 for each of fiscal years 1990 and 1991 and $6,000,000 for each of fiscal years 1992 and 1993.

"(b) The sum appropriated for a fiscal year pursuant to subsection (a) of this section shall remain available until the end of the fifth fiscal year following the fiscal year for which the sum is appropriated.

"(c) Of the funds appropriated for each fiscal year pursuant to the authorization in subsection (a) of this section, an amount not to exceed 10 percent of the sum so appropriated may be expended for the purpose described in section 5096(2) of this title.".

(2) The table of sections at the beginning of chapter 82 is amended by inserting after the item relating to section 5093 the following new item:

"5094. Authorization of appropriations.".

(c) IMPLEMENTING REGULATIONS.—(1) The Secretary of Veterans Affairs shall prescribe interim final regulations for implementation of the amendment made by subsections (a) and (b) not later than February 1, 1990.

(2) For the purposes of paragraph (1), the term "interim final regulations" means regulations that are in effect until the effective date of final regulations issued for implementation of the amendment made by paragraph (1).

SEC. 268. PAYMENT OF PHYSICIANS' AND DENTISTS' SPECIAL PAY.

(a) IN GENERAL.—Notwithstanding any other law and except as provided in subsection (b), effective with respect to pay periods beginning on or after April 1, 1990, the Secretary of Veterans Affairs shall pay the maximum amounts of special pay and incentive special pay authorized for physicians and dentists in section 4118 of title 38, United States Code, for such pay periods taking into account in the case of each physician and dentist the conditions specified in such section for determining the maximum amount applicable to such physician or dentist, as the case may be.

(b) EXCEPTION.—The Secretary is not required to pay the maximum amounts referred to in subsection (a) to physicians and dentists serving in any geographic area or in any specialty in which the Chief Medical Director has determined there is no significant recruitment and retention problem.

SEC. 269. PILOT PROGRAM OF PAY AND PERSONNEL MANAGEMENT PRACTICES.

(a) In General.—The Chief Medical Director of the Department of Veterans Affairs shall conduct a pilot program at not less than five Department medical centers or independent outpatient clinics during calendar years 1990, 1991, and 1992, in order to determine—

(1) the effects of pay and personnel management practices of the Veterans Health Services and Research Administration on the ability of the Department to recruit and retain persons qualified to provide direct patient-care services or services incident to direct patient-care services in Department health-care facilities as employees in employee position categories in which the Department is experiencing recruitment and retention problems;

(2) whether it is desirable to establish programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, registered nurses, and other employees providing direct patient care, and what effects such programs would have on the ability of the Department to recruit and retain registered nurses;

(3) whether it is desirable to create new alternatives for utilizing the skills and knowledge of registered nurses and other health-care professionals in furnishing direct patient care and services incident to the furnishing of such care, and what effects such alternatives would have on (A) the ability of the Department to recruit and retain persons qualified to provide such care and services, and (B) the cost of providing such care and services; and

(4) whether increasing the pay differential for evening and night shifts will attract adequate numbers of qualified workers for such shifts and result in more permanent day-shift assignments.

(b) Conduct of Pilot Program.—In conducting the pilot program under subsection (a), the Chief Medical Director shall—

(1) at not less than one site, establish a collaborative practice committee involving physicians, nurses, and, as appropriate, other direct health-care personnel;

(2) at not less than one site, significantly increase the pay differential for evening and night service; and

(3) at not less than three sites, implement new alternatives for utilizing the skills and knowledge of registered nurses and other health-care professionals in furnishing direct patient care and services incident to the furnishing of such care.

(c) Reports.—(1)(A) Not later than May 1, 1991, the Chief Medical Director shall submit to the Secretary of Veterans Affairs a report on the experience under the pilot program during the first 12 months such program is conducted. The report shall contain—

(i) the Chief Medical Director's evaluation of the effect of each management practice undertaken in the pilot program on the ability of the Department of Veterans Affairs to recruit and retain health-care employees;

(ii) information on the cost factors associated with each such management practice;

(iii) an evaluation of the functioning and productivity of the employees involved in or affected in any substantial way by such practices;

(iv) a discussion of any effects on the quality and timeliness of care provided to veterans; and

(v) any planned administrative actions and any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate to include in the report on the basis of the results of such pilot program.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Secretary shall submit a copy of the report, together with any comments on the report and any recommendations for legislation that the Secretary considers appropriate, to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2)(A) Not later than May 1, 1993, the Chief Medical Director shall submit to the Secretary a final report on the pilot program required by subsection (a). In such report the Chief Medical Director shall—

(i) update all information contained in the report submitted pursuant to paragraph (1)(A) of this subsection;

(ii) make a final assessment of the pilot program based on the experience under the program during the 36 months for which the program was conducted; and

(iii) make any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report together with—

(i) any comments on the report that the Secretary considers appropriate;

(ii) the Secretary's final assessment of the pilot program based on the experience under the program during the 36 months for which the program was conducted; and

(iii) any recommendations for legislation that the Secretary considers appropriate.

SEC. 270. RATES OF PAY FOR CERTAIN PSYCHOLOGISTS.

Notwithstanding any other provision of law, the Secretary of Veterans Affairs, not later than 90 days after the date of the enactment of this Act, shall utilize the authority provided in section 4107(g) of title 38, United States Code, to increase the rates of pay for clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accredited authority recognized by the Secretary unless the Chief Medical Director of the Department of Veterans Affairs determines that such psychologists are not needed to furnish appropriate quality of psychological services for veterans. The amount by which such rate of pay shall be increased shall be the amount determined by the Secretary, upon the recommendation of the Chief Medical Director, to be necessary to make the pay for such psychologists competitive with the pay of psychologists with the same qualifications and credentials serving in non-Department of Veterans Affairs capacities comparable to the Department capacities in which the Department psychologists are serving.

TITLE III—EDUCATION AND EMPLOYMENT

SEC. 300. SHORT TITLE.

This title may be cited as the "Veterans Education and Employment Amendments of 1989".

SEC. 301. REHABILITATION SUBSISTENCE ALLOWANCES FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES.

(a) RATE INCREASES.—The table in section 1508(b) is amended to read as follows:

"Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$339	$420	$495	$36
Three-quarter-time	255	315	371	27
Half-time	170	211	249	19

“Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
Farm cooperative, apprentice, or other on-job training:				
Full-time	297	358	413	26
Extended evaluation:				
Full-time	339	420	495	36
Independent living training:				
Full-time	339	420	495	36
Three-quarter-time	255	315	371	27
Half-time	170	211	249	19.”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect on January 1, 1990.

SEC. 302. EDUCATIONAL ASSISTANCE FOR SURVIVORS AND DEPENDENTS.

(a) Increased Allowances.—Section 1732 is amended—

(1) in subsection (a)—

(A) by inserting “109.5 percent of” in paragraph (1) after “computed at”; and

(B) by striking out “the rate prescribed in section 1682(b)(2) of this title for less-than-half-time pursuit of an institutional program by an eligible veteran” in paragraph (2) and inserting in lieu thereof “the lesser of (A) the rate determined under clause (A) of section 1682(b) of this title, or (B) 109.5 percent of the rate provided in clause (B) of such section 1682(b)”;

(2) in subsection (b), by striking out “$304” and inserting in lieu thereof “$333”;

(3) in subsection (c)—

(A) by inserting “109.5 percent of” in paragraph (2) after “computed at”; and

(B) by striking out “the rate prescribed in section 1682(e) of this title.” in paragraph (3) and inserting in lieu thereof “the lesser of (A) the rate determined under clause (A) of section 1682(b) of this title, or (B) 109.5 percent of the rate provided in clause (B) of such section 1682(b). Section 1682(e) of this title, except for the first sentence, shall apply to the educational assistance allowance computed under this paragraph.”;

(4) in subsection (e)—

(A) by striking out “(e) In” and inserting in lieu thereof “(e)(1) Subject to paragraph (2) of this subsection, in”; and

(B) by adding at the end the following new paragraph:

“(2) For the purposes of paragraph (1) of this subsection, the amounts of the monthly educational assistance allowances prescribed in subsections (a)(1) and (c)(2) of section 1682 of this title and in section 1787(b)(1) of this title, as referred to in section 1682(g) of this title, for a veteran with no dependents shall be deemed to be equal to 109.5 percent of the amounts so prescribed.”; and

(5) by adding at the end the following new subsection:

"(f) In the computation of an educational assistance allowance under this section, any amount of 50 cents or more shall be rounded to the next higher dollar and any amount of 49 cents or less shall be rounded to the next lower dollar.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 1990.

SEC. 303. VOCATIONAL TRAINING FOR CERTAIN PENSION RECIPIENTS.

(a) ELIMINATION OF MANDATORY EVALUATION REQUIREMENT.—Section 524 is amended—

(1) in subsection (a)—

(A) by striking out paragraphs (1) and (4) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(B) in paragraph (1) (as so redesignated) by striking out "Subject to paragraph (3)" and all that follows through "applies" and inserting in lieu thereof "Subject to paragraph (2) of this subsection, if a veteran who is awarded pension on or before January 31, 1992, applies"; and

(2) in the first sentence of subsection (b)(4), by striking out "either" and all that follows through the period and inserting in lieu thereof "the award of pension to the veteran as described in subsection (a)(1) of this section.".

(b) TRIAL WORK PERIOD.—Section 524 is further amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) The pension being paid to a veteran who, while participating in a vocational training program under subsection (b) of this section, secures employment within the scope of the objective of the veteran's individualized written rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, shall not be terminated by reason of either the veteran's capacity to engage in such employment or the income received from such employment (but only if the veteran's annual income from the other sources would, taken alone, not result in the termination of the veteran's pension) unless the veteran maintains that employment for twelve consecutive months.".

SEC. 304. PROVISION FOR PERMANENT PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE.

Section 1520 is amended—

(1) by striking out subsection (b);

(2) by striking out paragraph (5) of subsection (a);

(3) by redesignating paragraphs (2), (3), (4), (6) and (7) of subsection (a) as subsections (b), (c), (d), (e) and (f), respectively;

(4) in subsection (a)—

(A) by striking out "(1) During fiscal years 1982 through 1989, the" and inserting in lieu thereof "The";

(B) by striking out "paragraph (7) of this subsection" and inserting in lieu thereof "subsection (f) of this section"; and

(C) by striking out "paragraph (2) of this subsection" and inserting in lieu thereof "subsection (b) of this section";

(5) in subsection (b), as redesignated by clause (3), by striking out "and who is selected" and all that follows through "subsection";

(6) in subsection (c), as redesignated by clause (3), by striking out "paragraph (2) of this subsection" and inserting in lieu thereof "subsection (b) of this section";

(7) in subsection (e), as redesignated by clause (3), by striking out "of the fiscal years 1982 through 1989" and inserting in lieu thereof "fiscal year"; and

(8) in subsection (f), as redesignated by clause (3), by striking out "paragraph" and inserting in lieu thereof "subsection".

SEC. 305. VETERANS' AND RESERVISTS' WORK-STUDY PROGRAM.

(a) CRITERIA FOR DETERMINING WORK-STUDY ALLOWANCE.—(1) Section 1685(a) is amended—

(A) in the second sentence—

(i) by striking out "either";

(ii) by striking out "the hourly minimum wage" and all that follows through "(29 U.S.C. 206(a))" and inserting in lieu thereof "the applicable hourly minimum wage"; and

(iii) by striking out "or $625, whichever is the higher,";

(B) in the fourth sentence—

(i) by striking out "either"; and

(ii) by striking out "the hourly minimum wage" and all that follows through "higher" and inserting in lieu thereof "the applicable hourly minimum wage";

(C) by inserting "(1)" after "(a)"; and

(D) by adding at the end the following new paragraph:

"(2) For the purposes of paragraph (1) of this subsection, the term 'applicable hourly minimum wage' means the hourly minimum wage under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) or the hourly minimum wage under comparable law of the State in which the services are to be performed, whichever is higher.".

(2) Section 1685(b) is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a)(1)".

(b) SELECTED RESERVISTS' WORK-STUDY ASSIGNMENTS.—The second sentence of section 1685(a), as amended by subsection (a)(1)(A), is further amended—

(1) in clause (3), by striking out "or" at the end; and

(2) by striking out the period at the end and inserting in lieu thereof ", or, in the case of a veteran-student who is receiving educational assistance under chapter 106 of title 10, activities relating to the administration of such chapter at Department of Defense facilities.".

(c) EXPANSION OF WORK-STUDY ELIGIBILITY FOR SERVICE-DISABLED VETERANS AND RESERVISTS.—Section 1685(b) is amended—

(1) in the first sentence by striking out "are pursuing" and all that follows through the period and inserting in lieu thereof "(1) are pursuing full-time programs of education or training under chapter 30, 32, or 34 of this title or chapter 106 of title 10, (2) have service-connected disabilities rated at 30 percent or more and are pursuing programs of education or training on at least a half-time basis under chapter 30, 32, or 34 of this title, or (3) are pursuing programs of rehabilitation on at least a half-time basis under chapter 31 of this title (excluding programs where pursuit is based on limited work tolerance)."; and

(2) in the last sentence by striking out "full-time student" and inserting in lieu thereof "veteran-student as described in clause (1), (2), or (3) of this subsection".

(d) CONFORMING AMENDMENTS.—(1) Section 1685 is amended by adding at the end the following new subsection:

"(e) For the purposes of this section, the terms 'veteran' and 'veteran-student' include a person receiving educational assistance under chapter 106 of title 10.".

(2) Section 2136(b) of title 10, United States Code, is amended by striking out "and 1683" and inserting in lieu thereof "1683, and 1685".

(e) CLERICAL AMENDMENT.—Section 1685 is amended by striking out "per centum" each place it appears and inserting in lieu thereof "percent".

(f) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on August 1, 1990, and shall apply to services performed on or after that date.

SEC. 306. WORK-STUDY PROGRAM FOR SURVIVORS AND DEPENDENTS.

(a) IN GENERAL.—(1) Subchapter IV of chapter 35 is amended by inserting after section 1736 the following new section:

"§ 1737. Work-study allowance

"(a) Subject to subsection (b) of this section, the Secretary shall utilize, in connection with the activities described in section 1685(a) of this title, the services of any eligible person who is pursuing, in a State, a full-time program of education (other than a course of special restorative training) and shall pay to such person an additional educational assistance allowance (hereafter in this section referred to as 'work-study allowance') in return for such eligible person's agreement to perform such services. The amount of the work-study allowance shall be determined in accordance with section 1685(a) of this title.

"(b) The Secretary's utilization of, and payment of a work-study allowance for, the services of an eligible person pursuant to subsection (a) of this section shall be subject to the same requirements, terms, and conditions as are set out in section 1685 of this title with regard to veteran-students pursuing full-time programs of education referred to in subsection (b) of such section.".

(2) The table of sections at the beginning of chapter 35 is amended by inserting after the item relating to section 1736 the following new item:

"1737. Work-study allowance.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on August 1, 1990.

SEC. 307. WITHDRAWAL FROM COURSE UNDER MITIGATING CIRCUMSTANCES.

Section 1780 is amended by adding at the end the following new subsection:

"(h) Mitigating circumstances referred to in subsection (a)(4) include the suspension of the pursuit of a program of education, or withdrawal from a course or courses, by an eligible veteran or eligible person in order for such veteran or person personally to furnish child care for the veteran's or person's child if the necessity for personally furnishing such child care results from difficulties, beyond the control of such veteran or person, in making or changing child-care arrangements.".

SEC. 308. LIMITED EXTENSION AND EXPANSION OF THE VETERANS' READJUSTMENT APPOINTMENT AUTHORITY.

(a) Extension of Authority.—Paragraph (2) of section 2014(b) is redesignated as paragraph (3) and is amended by striking out "1989" and inserting in lieu thereof "1991".

(b) Eligibility.—(1) Section 2014(a)(1) is amended by striking out "qualified disabled veterans and veterans of the Vietnam era" and inserting in lieu thereof "certain disabled veterans, certain veterans of the Vietnam era, and veterans of the post-Vietnam era who are qualified for such employment and advancement".

(2) Subsection (b) of section 2014 is amended—

(A) in paragraph (1)—

(i) by striking out "veterans of the Vietnam era" and inserting in lieu thereof "veterans referred to in paragraph (2)"; and

(ii) by striking out clause (B) and inserting in lieu thereof the following:

"(B) a veteran referred to in paragraph (2) shall be eligible for a readjustment appointment during the four-year period beginning on the date of the veteran's latest discharge or other separation from active duty;";

(iii) by inserting "referred to in paragraph (2)" in clause (C) after "a veteran of the Vietnam era";

(iv) by striking out "and" at the end of clause (C);

(v) by striking out the period at the end of clause (D) and inserting in lieu thereof "; and"; and

(vi) by adding at the end the following new clause:

"(E) a veteran may not receive, after the date of the enactment of this clause, more than one readjustment appointment pursuant to this subsection."; and

(B) by inserting after paragraph (1) the following new paragraph (2):

"(2) This subsection applies to—

"(A) a veteran of the Vietnam era who—

"(i) is a disabled veteran; or

"(ii) during such era, served on active duty in the Vietnam theater of operations, as defined by the Secretary;

"(B) a veteran who has a service-connected disability rated at 30 percent or more; and

"(C) a veteran who served on active duty after the Vietnam era.".

(b) Transition Provision.—If the eligibility of a veteran for an appointment pursuant to paragraph (1) of section 2014(b) of title 38, United States Code, would expire by reason of the provisions of clause (B) of such paragraph, as amended by subsection (a)), then, notwithstanding such clause, that veteran shall continue to be eligible for such an appointment until January 1, 1992.

(c) Effective Date.—(1) Except as provided in paragraphs (2) and (3), the amendments made by subsection (a) shall take effect on January 1, 1990.

(2) Clause (E) of section 2014(b)(1) of title 38, United States Code (as added by subsection (a)), shall take effect on the date of the enactment of this Act.

(3)(A) A veteran who has a service-connected disability rated at 30 percent or more or who served on active duty after the Vietnam era shall be eligible for appointments pursuant to section 2014(b)(1) of title 38, United States Code, on and after the date of the enactment of this Act.

(B) For the purposes of subparagraph (A)—

(i) the term "veteran" shall have the meaning referred to in section 2014(f) of title 38, United States Code; and

(ii) the terms "active duty" and "Vietnam era" shall have the meanings given such terms in section 101 (21) and (29), respectively, of title 38, United States Code.

SEC. 309. PILOT PROGRAM TO FURNISH EMPLOYMENT AND TRAINING INFORMATION AND SERVICES TO MEMBERS OF THE ARMED FORCES SEPARATING FROM THE ARMED FORCES.

(a) Requirement for Program.—During the three-year period beginning on October 1, 1989, the Secretary of Labor shall conduct a pilot program to furnish employment and training information and services to members of the Armed Forces within 180 days before such members are separated from the Armed Forces.

(b) AREAS TO BE COVERED BY THE PROGRAM.—The Secretary shall conduct the pilot program in not more than five geographically dispersed States in which the Secretary determines that employment and training services to eligible veterans will not be unduly limited by the provision of such services to members of the Armed Forces under the pilot program.

(c) UTILIZATION OF SPECIFIC PERSONNEL.—The Secretary shall utilize disabled veterans' outreach program specialists or local veterans' employment representatives to the maximum extent feasible to furnish employment and training information and services under the pilot program.

(d) REPORT.—Not later than February 1, 1992, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program.

SEC. 310. ALTERNATE SECONDARY SCHOOL CREDENTIALS FOR MONTGOMERY GI BILL ELIGIBILITY.

(a) ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM.—(1) Section 1411(a)(2) is amended by striking out "(or equivalency certificate)" and inserting in lieu thereof "(or the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary)".

(2) Section 1412(a)(2) is amended by striking out "(or an equivalency certificate)" and inserting in lieu thereof "(or the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary)".

(c) EDUCATIONAL ASSISTANCE PROGRAM FOR MEMBERS OF THE SELECTED RESERVE.—Section 2132(a)(2) of title 10, United States Code, is amended by striking out "(or an equivalency certificate)" and inserting in lieu thereof "(or the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary)".

SEC. 311. BAR TO RECEIPT OF CHAPTER 32 AND 106 BENEFITS FOR SAME PERIOD OF SERVICE.

Section 1621 is amended by adding at the end the following:

"(f) An individual who serves in the Selected Reserve may not receive credit for such service under both the program established by this chapter and the program established by chapter 106 of title 10 but shall elect (in such form and manner as the Secretary may prescribe) the program to which such service is to be credited.".

SEC. 312. ACCEPTING SCHOOL CERTIFICATION FOR RENEWAL OF EDUCATIONAL BENEFITS AFTER UNSATISFACTORY PROGRESS.

(a) VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 1674 is amended by striking out clauses (1) and (2) and inserting in lieu thereof the following:

> "(1) the veteran will be resuming enrollment at the same educational institution in the same program of education and the educational institution has both approved such veteran's reenrollment and certified the reenrollment to the Department of Veterans Affairs; or
>
> "(2) in the case of a proposed change of either educational institution or program of education by the veteran—
>
> > "(A) the cause of the unsatisfactory conduct or progress has been removed;
> >
> > "(B) the program proposed to be pursued is suitable to the veteran's aptitudes, interests, and abilities; and
> >
> > "(C) if a proposed change of program is involved, the change meets the requirements for approval under section 1791 of this title.".

(b) SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 1724 is amended by striking out clauses (1) and (2) and inserting in lieu thereof the following:

> "(1) the eligible person will be resuming enrollment at the same educational institution in the same program of education and the educational institution has both approved such person's reenrollment and certified the reenrollment to the Department of Veterans Affairs; or
>
> "(2) in the case of a proposed change of either educational institution or program of education by the eligible person—
>
> > "(A) the cause of the unsatisfactory conduct or progress has been removed;
> >
> > "(B) the program proposed to be pursued is suitable to the person's aptitudes, interests, and abilities; and
> >
> > "(C) if a proposed change of program is involved, the change meets the requirements for approval under section 1791 of this title.".

SEC. 313. REMOVAL OF ATTENDANCE REQUIREMENT DISTINCTIONS BETWEEN DEGREE AND NON-DEGREE TRAINING.

(a) Unsatisfactory Attendance.—(1) Section 1674, as amended by section 312, is further amended by striking out "conduct" each place it appears and inserting in lieu thereof "attendance, conduct,".

(2) Section 1724 is amended by striking out "conduct" each place it appears and inserting in lieu thereof "attendance, conduct,".

(b) Approval of Accredited Courses Without Attendance Standards.—Section 1775(b) is amended by inserting "if the educational institution does not have a formal policy or regulations specifying minimum satisfactory attendance standards required for a student to avoid interruption of a course, loss of credit, or dismissal" before the end parenthesis in the first sentence.

(c) Payment Period.—Section 1780(a) is amended—

(1) in clause (1), by striking out "which leads to" and all that follows through "title," the first time it appears and inserting in lieu thereof "approved pursuant to section 1775 of this title";

(2) by striking out clause (2) and inserting in lieu thereof the following:

"(2) to any eligible veteran or eligible person enrolled in a course approved pursuant to section 1776 of this title for any period for which the Secretary finds, pursuant to section 1674 or 1724 of this title, that such veteran's or person's attendance, conduct, or progress is unsatisfactory or that such veteran or person is not pursuing that course in accordance with (A) the provisions of such regulations as the Secretary may prescribe pursuant to subsection (g) of this section, and (B) the requirements of this chapter or of chapter 34 or 35 of this title;";

(3) in subclause (A) of the matter following clause (5), by striking out ", and such periods" and all that follows through "subsection"; and

(4) in subclauses (B) and (C) of the matter following clause (5), by striking out ", but such periods" and all that follows through "subsection" each place it appears.

(d) Conforming Amendment.—Section 1785(b) is amended by striking out "excessive absences from a course, or".

SEC. 314. FUNDING FOR STATE APPROVING AGENCIES FOR TRAINING CURRICULUM DEVELOPMENT.

(a) In General.—Section 1774(a) of title 38, United States Code, is amended—

(1) in paragraph (2)(A), by striking out "section and for" and inserting in lieu thereof "section, for expenses incurred in carrying out activities described in section 1774A(a)(4) of this title (except for administrative overhead expenses allocated to such activities), and for"; and

(2) in paragraph (2)(C), by inserting before the period the following: "and the amount of expenses incurred in carrying out activities described in section 1774A(a)(4) of this title for such period (except for administrative overhead expenses allocated to such activities)".

(b) Effective Date.—The amendments made by this section shall become effective on October 1, 1989.

SEC. 315. PROOF OF SATISFACTORY PURSUIT OF A PROGRAM OF EDUCATION.

(a) Withholding of Benefits; Form of Proof.—Section 1780(g) is amended by striking out "the Administrator is authorized" in the second sentence and all that follows through the period at the end of that sentence and inserting in lieu thereof "the Secretary may withhold payment of benefits to such eligible veteran or eligible person until the required proof is received and the amount of the payment is appropriately adjusted. The Secretary may accept such veteran's or person's monthly certification of enrollment in and satisfactory pursuit of such veteran's or person's program as sufficient proof of the certified matters.".

(b) Technical Amendment.—Section 1780(g) is amended by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary".

(c) Conforming Amendments.—Section 1434 is amended—

(1) in subsection (a)(1), by striking out "1780(g),"; and

(2) by striking out subsection (b).

SEC. 316. REPORTING FEES.

Section 1784 is amended—

(1) in subsection (a)(1), by striking out "chapter 34" and inserting in lieu thereof "chapter 31, 34,";

(2) in subsection (b), by striking out "chapters 34" and inserting in lieu thereof "chapters 31, 34"; and

(3) in subsection (c), by striking out "chapter 34" each place it appears and inserting in lieu thereof "chapter 31, 34,".

SEC. 317. CLOCK-HOUR MEASUREMENT OF CERTAIN UNIT COURSES OR SUBJECTS CREDITABLE TOWARD A STANDARD COLLEGE DEGREE.

Section 1788(e) is amended to read as follows:

"(e)(1) For the purpose of measuring clock hours of attendance or net of instruction under clause (1) or (2), respectively, of subsection (a) of this section for a course—

"(A) which is offered by an institution of higher learning, and

"(B) for which the institution requires one or more unit courses or subjects for which credit is granted toward a standard college degree pursued in residence on a standard quarter- or semester-hour basis,

the number of credit hours (semester or quarter hours) represented by such unit courses or subjects shall, during the semester, quarter, or other applicable portion of the academic year when pursued, be converted to equivalent clock hours, determined as prescribed in paragraph (2) of this subsection. Such equivalent clock hours then shall be combined with actual weekly clock hours of training concurrently pursued, if any, to determine the total clock hours of enrollment.

"(2) For the purpose of determining the clock-hour equivalency described in paragraph (1) of this subsection, the total number of credit hours being pursued will be multiplied by the factor resulting from dividing the number of clock hours which constitute full time under clause (1) or (2) of subsection (a) of this section, as appropriate, by the number of semester hours (or the equivalent thereof) which, under clause (4) of such subsection, constitutes a full-time institutional undergraduate course at such institution.".

SEC. 318. DEPARTMENT OF VETERANS AFFAIRS APPROVAL OF CERTAIN COURSES.

Section 1789(b)(6)(B) is amended by inserting "and members of the Selected Reserve of the Ready Reserve eligible for educational assistance under chapter 106 of title 10;" after "dependents".

SEC. 319. LIMITATIONS ON CHANGES OF PROGRAMS OF EDUCATION.

(a) REPEAL OF LIMITATION ON NUMBER OF CHANGES.—(1) Section 1791(a) is amended by striking out "Except" and all that follows through "education, but" and inserting in lieu thereof "An eligible veteran or an eligible person who has not made a change of program of education pursued by such veteran or person, as the case may be, may make one such change without the approval of the Secretary. Except as provided in subsections (b) and (c) of this section,".

(2) Section 1791 is amended—

(A) in subsection (b), by striking out the matter above clause (1) and inserting in lieu thereof "The Secretary may approve any change in program (including any change in the case of a veteran or person not entitled to make a change under subsection (a) of this section) if the Secretary finds—"; and

(B) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The Secretary may also approve any change of program of education if the Secretary finds such change is necessitated by circumstances beyond the control of the eligible veteran or eligible person.".

(b) COUNSELING REQUIREMENT.—(1) Section 1791(b)(1) is amended by inserting ", determined, in the case of each change after the eligible veteran's or eligible person's first change, as provided in subsection (d) of this section" after "abilities".

(2) Section 1791 is amended—

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following new subsection (d):

"(d) The Secretary may approve a second or subsequent change of program of education by an eligible veteran or eligible person only if—

"(1) the veteran or person accepts educational or vocational counseling services referred to in section 1663 of this title; and

"(2) the Secretary determines, on the basis of the results of the educational or vocational counseling, that the change is suited to the veteran's or person's aptitudes, interests, and abilities.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on August 1, 1990.

SEC. 320. EFFECTIVE DATE OF ADJUSTMENTS OF EDUCATIONAL BENEFITS.

Section 3013 is amended to read as follows:

(1) by striking out "Effective" and inserting in lieu thereof "(a) Except as provided in subsection (b) of this section, effective"; and

(2) by adding at the end the following new subsection:

"(b) The effective date of an adjustment of benefits under any chapter referred to in subsection (a) of this section, if made on the basis of a change in a student's rate of pursuit of training for which proof is required by the Secretary under section 1780(g) of this title, or if made on the basis of any other change in a student's training time for which proof is required by the Secretary under such section, shall be the date of the change.".

SEC. 321. TECHNICAL AND CLERICAL AMENDMENTS.

(a) ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM.—Section 1434, as amended by section 315(c), is further amended—

(1) in subsection (a)(1), by inserting "1780(f)," after "1780(c),"; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) Payment of educational assistance allowance in the case of an eligible individual pursuing a program of education under this chapter on less than a half-time basis shall be made in a lump-sum amount for the entire quarter, semester, or term not later than the last day of the month immediately following the month in which certification is received from the educational institution that such individual has enrolled in and is pursuing a program at such institution. Such lump-sum payment shall be computed at the rate determined under section 1432(b) of this title.".

(b) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 1633 is amended by adding at the end the following new subsection:

"(d) For any month in which an individual fails to complete 120 hours of training, the entitlement otherwise chargeable under subsection (c) of this section shall be reduced in the same proportion as the monthly benefit payment payable is reduced under subsection (b) of this section.".

(c) ADMINISTRATION OF EDUCATIONAL BENEFITS.—Section 1790 is amended—

(1) in subsection (a)(2), by striking out "and prepayment"; and

(2) in subsection (b)(3)(A), by inserting "30," before "32".

TITLE IV—HOME LOAN

SEC. 400. SHORT TITLE.

This title may be cited as the "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989".

SEC. 401. ESTABLISHMENT OF HOME LOAN GUARANTY FUND.

(a) NEW FUND.—(1) Chapter 37 is amended by inserting after section 1824 the following new section:

"§ 1824A. Home Loan Guaranty Fund

"(a) There is hereby established in the Treasury of the United States a revolving fund known as the Home Loan Guaranty Fund (hereinafter referred to as the 'Guaranty Fund').

"(b) The Guaranty Fund shall be available to the Secretary for all operations (other than administrative expenses) carried out with respect to (1) housing loans guaranteed or insured under this chapter which are made after September 30, 1989, and (2) loans to which section 1814 of this title applies and which are assumed after such date.

"(c)(1) All fees collected under sections 1803(a)(3)(A) and 1829 of this title after September 30, 1989, shall be credited to the Guaranty Fund.

"(2) There shall also be credited to the Guaranty Fund—

"(A) for each housing loan guaranteed or insured under this chapter after September 30, 1989, an amount equal to 0.25 percent of the original amount of such loan for each of the three fiscal years beginning with the fiscal year in which such loan is guaranteed or insured (except in the case of a loan guaranteed or insured during fiscal year 1990, for which such amount shall be credited for each of the three fiscal years beginning with fiscal year 1991);

"(B) all collections of principal and interest and the proceeds from the use of property held, or from the sale of property disposed of, with respect to loans to which subsection (b) of this section applies;

"(C) amounts required to be credited under section 1829(c) of this section; and

"(D) all income from the investments described in subsection (d) of this section.

"(d)(1) The Secretary of the Treasury shall invest the portion of the Guaranty Fund that is not required to meet current payments made from the Guaranty Fund, as determined by the Secretary of Veterans Affairs, in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

"(2) In making investments under paragraph (1) of this subsection, the Secretary of the Treasury shall select obligations having maturities suitable to the needs of the Guaranty Fund, as determined by the Secretary of Veterans Affairs, and bearing interest at suitable rates, as determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.".

(2) The table of sections of subchapter III of chapter 37 is amended by inserting after the item relating to section 1824 the following new item:

"1824A. Home Loan Guaranty Fund.".

(b) ANNUAL SUBMISSION OF INFORMATION ON THE LOAN GUARANTY REVOLVING FUND AND THE HOME LOAN GUARANTY FUND.—(1) Subchapter III of chapter 37 is amended by adding at the end the following new section:

"§ 1834. Annual Submission of Information on the Loan Guaranty Revolving Fund and the Home Loan Guaranty Fund

"(a) In the documents providing detailed information on the budget for the Department of Veterans Affairs that the Secretary of Veterans Affairs submits to the Congress in conjunction with the President's budget submission for each fiscal year pursuant to section 1105 of title 31, United States Code, the Secretary shall include—

"(1) a thorough description of the operations of the Loan Guaranty Revolving Fund and the Home Loan Guaranty Fund during the fiscal year preceding the fiscal year in which such budget is submitted; and

"(2) the needs of such funds, if any, for appropriations in—

"(A) the fiscal year in which the budget is submitted; and

"(B) the fiscal year for which the budget is submitted.

"(b) The matters submitted under subsection (a) of this section shall include, with respect to each fund referred to in subsection (a), the following:

"(1) Information and financial data on the operations of the fund during the fiscal year before the fiscal year in which such matters are submitted and estimated financial data and related information on the operation of the fund for—

"(A) the fiscal year of the submission; and

"(B) the fiscal year following the fiscal year of the submission.

"(2) Estimates of the amount of revenues derived by the fund in the fiscal year preceding the fiscal year of the submission, in the fiscal year of the submission, and in the fiscal year following the fiscal year of the submission from each of the following sources:

"(A) Fees collected under sections 1803(a)(3)(A) and 1829 of this title for each category of loan guaranteed, insured, or made under this chapter.

"(B) Federal Government contributions made under section 1824A(c)(2)(A) of this title.

"(C) Federal Government payments under section 1829(c) of this title.

"(D) Investment income.

"(E) Sales of foreclosed properties.

"(F) Loan asset sales.

"(G) Each additional source of revenue.

"(3) Information, for each fiscal year referred to in paragraph (2) of this subsection, regarding the types of dispositions made of defaults on loans guaranteed, insured, or made under this chapter, including the cost to the fund, and the numbers, of such types of dispositions.".

(2) The table of sections of subchapter III of chapter 37 is amended by inserting after the item relating to section 1833 the following new item:

"1834. Annual Submission of Information on the Loan Guaranty Revolving Fund and the Home Loan Guaranty Fund.".

(c) CONFORMING AMENDMENTS.—Section 1824 is amended—

(1) in subsection (b), by inserting "and the operations carried out in connection with the Home Loan Guaranty Fund established by section 1824A" before the period at the end of the first sentence; and

(2) in subsection (c)—

(A) by inserting "before October 1, 1989" after "title" in clause (2); and

(B) by inserting "with respect to housing loans guaranteed or insured under this chapter before October 1, 1989" after "chapter" in clause (3).

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on October 1, 1989, and shall apply with respect to loans closed or assumed on or after that date.

SEC. 402. LOAN FEE.

(a) IN GENERAL.—Section 1829 is amended to read as follows:

"§ 1829. Loan fee

"(a)(1) Except as provided in subsection (c), a fee shall be collected from each veteran obtaining a housing loan guaranteed or insured under this chapter, and from each person obtaining a loan under section 1833(a) of this title, and no such loan may be guaranteed, made, or insured under this chapter until the fee payable under this section has been remitted to the Secretary.

"(2) The amount of such fee shall be 1.25 percent of the total loan amount, except that—

"(A) in the case of a loan made under section 1833(a) of this title, the amount of such fee shall be one percent of the total loan amount;

"(B) in the case of a guaranteed or insured loan for a purchase (except for a purchase referred to in section 1812(a) of this title), or for construction, with respect to which the veteran has made a downpayment of not less than 5 percent of the total purchase price or construction cost, the amount of such fee shall be 0.75 percent of the total loan amount;

"(C) in the case of a guaranteed or insured loan for a purchase (except for a purchase referred to in section 1812(a) of this title), or for construction, with respect to which the veteran has made a downpayment of not less than 10 percent of the total purchase price or construction cost, the amount of such fee shall be 0.25 percent of the total loan amount; and

"(D) in the case of a guaranteed or insured loan for a purchase referred to in section 1812(a) of this title with respect to which the veteran has made a downpayment of not less than 10 percent of the total purchase price, the amount of such fee shall be 0.75 percent of the total loan amount.

"(3) The amount of the fee may be included in the loan and paid from the proceeds thereof.

"(b) Except as provided in subsection (c) of this section, a fee shall be collected from a person assuming a loan to which section 1814 of this title applies. The amount of the fee shall be equal to 0.75 percent of the balance of the loan on the date of the transfer of the property.

"(c)(1) A fee may not be collected under this section from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse of any veteran (including a person who died in the active military, naval, or air service) who died from a service-connected disability. There shall be credited to the Home Loan Guaranty Fund, on behalf of such veteran or surviving spouse (in addition to the amount required to be credited to such fund under section 1824A(c)(2)(A) of this title), the amount equal to the fee that, except for this subsection, would be collected from such veteran or surviving spouse.

"(2) Credits to the Home Loan Guaranty Fund under paragraph (1) of this subsection with respect to loans, guaranteed, insured, or made under this chapter during fiscal year 1990 shall be made in October 1990.

"(d)(1) Subject to paragraphs (2) and (3) of this subsection, the Secretary may increase each fee percentage specified in subsections (a) and (b) of this section, or each such fee percentage as previously increased under this paragraph, if the Secretary determines, on the basis of economic projections and analyses, that the Home Loan Guaranty Fund would, except for such increase, be unable to pay the valid claims of holders of defaulted loans during the first 24 months that such increase is to be in effect. In exercising the authority under this paragraph, the Secretary shall increase all such fee percentages by multiplying each such fee percentage by the same factor.

"(2) An increased percentage prescribed by the Secretary under paragraph (1) of this subsection for a fee required to be collected under subsection (a) or (b) of this section may not exceed the percentage determined by multiplying the percentage specified for such fee in that subsection by 1.2.

"(3) The Secretary may not in any fiscal year increase fee percentages under paragraph (1) of this subsection unless the Secretary first submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the Secretary's determination to increase the fee percentages, the factor by which the fee percentages are to be increased, and the economic projections and analyses on which the Secretary bases such determination. Any such report shall be submitted not later than the day on which the President, pursuant to section 1105 of title 31, submits to the Congress the budget for the fiscal year in which the increase is proposed to take effect. On the same day that the Secretary submits the report to the committees, the Secretary shall submit a copy of the report to the Director of the Congressional Budget Office.

"(4) Not later than 30 days after the Secretary submits the report to the committees, the Director of the Congressional Budget Office shall transmit to the committees the Director's views on the Secretary's report.

"(e)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the Secretary may reduce each fee percentage increased under paragraph (1) of this subsection if the Secretary determines, on the basis of economic projections and analyses, that the Home Loan Guaranty Fund will, despite such reduction, be able to pay the valid claims of holders of defaulted loans during the first 24 months that the reduced fee percentage is to be in effect.

"(2) In exercising the authority under paragraph (1) of this subsection, the Secretary shall reduce all such fee percentages by multiplying each such fee percentage by the same factor.

"(3) The percentage for a particular fee may not be reduced below the percentage specified for that fee in subsection (a)(2) of this section.

"(4) At least 30 days before reducing fee percentages under this subsection, the Secretary shall provide the Committees on Veterans' Affairs of the Senate and House of Representatives with notice of the proposed reduction, a copy of the Secretary's determination under paragraph (1) of this subsection, and the economic projections and analyses on which the Secretary bases such determination.".

(b) Effective Date.—The amendments made by this section shall take effect on October 1, 1989, and shall apply with respect to loans closed or assumed on or after that date.

SEC. 403. INDEMNIFICATION OF VETERAN AFTER DEFAULT.

(a) Exceptions from Liability.—Section 1803 is amended by adding at the end the following new subsection:

"(e) Any individual who pays a fee under section 1829 of this title, or is exempted under section 1829(c) from paying such fee, after September 30, 1989, with respect to a housing loan (other than a loan made under section 1833(a) of this title) shall have no liability to the Secretary with respect to the loan for any loss resulting from any default of such individual except in the case of (1) fraud, misrepresentation, or bad faith by the individual in obtaining the loan or approval of an assumption of the loan or in connection with the loan default, or (2) a default or liquidation resulting from circumstances within the individual's control.".

(b) Conforming Amendment.—The last sentence of section 1832(a)(1) is amended by striking out "If" and inserting in lieu thereof "Except as provided in section 1803(e) of this title, if".

(c) Effective Date.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 1989, and shall apply with respect to loans closed or assumed on or after that date.

(2) Clause (2) of section 1803(e) of title 38, United States Code (as added by subsection (a)), shall take effect on the date on which the Secretary of Veterans Affairs issues final regulations to implement such subsection.

SEC. 404. SALE OF VENDEE LOANS.

(a) In General.—Section 1833(a)(3) is amended—

(1) in subparagraph (A), by striking out "1989" and inserting in lieu thereof "1990";

(2) in subparagraph (B), by striking out "1989" and inserting in lieu thereof "1990";

(3) in subparagraph (C), by striking out "1989" and inserting in lieu thereof "1990"; and

(4) by adding at the end the following new subparagraph:

"(D) Notwithstanding the Balanced Budget and Emergency Deficit Control Act of 1985 and the Congressional Budget and Impoundment Control Act of 1974, all amounts received from the sale of such loans shall be credited without any reduction, for the fiscal year in which the amount is received, as offsetting collections of the Loan Guaranty Revolving Fund (established by section 1824 of this title) or the Home Loan Guaranty Fund (established by section 1824A of this title), for which a fee was collected (or from which a fee was exempted from being collected) at the time the loan was originally guaranteed. The total amount credited to the Loan Guaranty Revolving Fund or the Home Loan Guaranty Fund for a fiscal year shall offset outlays attributed to such Fund, as the case may be, during such fiscal year.".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on October 1, 1989.

SEC. 405. COMPUTATION OF ENTITLEMENT AMOUNT.

(a) Optional Increased Entitlement.—Section 1803(a) is amended—

(1) in paragraph (1)(B), by striking out "The" and inserting in lieu thereof "Except in the case of an election pursuant to paragraph (3)(A) of this subsection, the"; and

(2) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraphs (B) and (C) of this paragraph, the maximum amount of guaranty entitlement available to a veteran for purposes specified in clauses (1), (2), (3), and (6) of section 1810(a) of this title may, upon the election of the veteran, be increased by not more than $5,000 in connection with a specific loan. The Secretary shall collect from that veteran a fee equal to 0.1 percent of the total loan amount for each $1,000 (and fraction of $1,000) by which the veteran elects to increase that maximum amount.

"(B) The total amount of the guaranty entitlement available to a veteran in connection with a loan for a purchase or construction may not be increased pursuant to subparagraph (A) of this paragraph by an amount which would cause the sum of the guaranty and any downpayment to exceed 25 percent of the price of the purchase or construction.

"(C) The Secretary may waive the limitation in subparagraph (B) of this paragraph in the case of a loan for the purchase or construction of housing whenever the Secretary determines, in accordance with regulations prescribed by the Secretary, that the housing is being purchased or constructed in a housing market area for which it is the general practice of lenders, in the case of loans to be guaranteed under this chapter, to require the payment of points in, or to discount the loans by, such large amounts as to make it unlikely that a veteran could obtain such a loan for the purchase or construction of housing in such market area.

"(D) The amount of the fee imposed by subparagraph (A) of this paragraph may be included in the loan and paid from the proceeds thereof.".

(b) Effective Date and Applicability.—The amendments made by subsection (a) shall take effect on October 1, 1989, and shall apply with respect to loans guaranteed or insured under chapter 37 of title 38, United States Code, after September 30, 1989.

SEC. 406. PROCEDURES ON DEFAULT.

(a) Notification Requirement.—Section 1832(a) is amended by adding at the end the following new paragraph:

"(5) When a default has occurred in the payment of any loan made, guaranteed, or insured under this chapter and the holder of the obligation has refused a tender of a payment of a significant portion of an amount payable under the terms of the loan, the Secretary may require the holder of the obligation to notify the Secretary as soon as such tendered payment has been refused. The Secretary may require that any such notification include a statement of the circumstances of the default, the amount tendered, the amount of the indebtedness on the date of the tender, the reasons for the holder's refusal, and such other information as the Secretary determines is necessary in order to service defaulted loans.".

(b) Computation of Net Value.—Section 1832(c)(1)(C) is amended by—

(1) striking out "(i)";

(2) striking out "(ii)" and inserting in lieu thereof "(i)"; and

(3) inserting "(other than the cost of borrowing funds to acquire the property), and minus (ii) 50 percent of the cost to the Government of borrowing the amount equal to the excess, if any, of the total indebtedness over the amount guaranteed under this chapter" before the period at the end.

(c) Postponement of Expiration Date.—Paragraph (11) of section 1832(c) is amended by striking out "October 1, 1989" and inserting in lieu thereof "October 1, 1991.".

SEC. 407. REFINANCING LOANS.

(a) Repeal of Limitation on Amount of Refinancing Loan.—Section 1810 is amended by striking out subsection (h).

(b) Conditions for Guaranteeing or Making a Refinancing Loan.—Subsection (b) of section 1810 is amended—

(1) in paragraph (5), by inserting "except in the case of a loan described in clause (7) or (8) of this subsection," after "(5)";

(2) by striking out "and," at the end of paragraph (5);

(3) by striking out the period at the end of paragraph (6) and inserting in lieu thereof a semicolon; and

(4) by adding at the end the following new paragraphs:

"(7) in the case of a loan (other than a loan made for a purpose specified in subsection (a)(8)) that is made to refinance a construction loan, an installment land sales contract, or a loan assumed by the veteran and that provides for a lower interest rate than the loan being refinanced, the amount of the loan to be guaranteed or made does not exceed the lesser of—

"(A) the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 1831 of this title; or

"(B) the sum of the outstanding balance on the loan to be refinanced and the closing costs (including discounts) actually paid by the veteran, as specified by the Secretary in regulations; and

"(8) in the case of a loan to refinance a loan other than a loan or installment sales contract described in clause (7), the amount of the loan to be guaranteed or made does not exceed 90 percent of the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 1831 of this title.".

SEC. 408. WAIVER OF INDEBTEDNESS.

Section 3102 is amended—

(1) in subsection (a), by adding at the end the following: "The Secretary shall include in the notification a statement of the debtor's right to submit an application for a waiver under this subsection and a description of the procedures for submitting the application."; and

(2) in subsection (b)—

(A) by striking out "101 and 1801" and inserting in lieu thereof, "101, 1801, and 1802(a)(2)(C)(ii) of this title"; and

(B) by adding at the end the following: "An application for relief under this subsection must be made within one year after the date on which the Secretary notifies the debtor of the indebtedness. The Secretary shall include in the notification a statement of the debtor's right to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.".

SEC. 409. CLARIFYING CORRECTION REGARDING ENTITLEMENT.

Section 1802(a)(2)(C) is amended—

(1) by striking out "Each veteran," and inserting in lieu thereof "Each person";

(2) in clause (i), by inserting "is a veteran who" after "(i)"; and

(3) in clause (ii), by inserting "without regard to whether such person has been discharged or released from active duty" [before the period at the end?].

TITLE V—MEMORIAL AFFAIRS

SEC. 501. REIMBURSEMENT FOR COST OF CEMETERY HEADSTONE OR MARKER.

Subsection (d) of section 906 of title 38, United States Code, is amended—

(1) by striking out "actual costs incurred by or on behalf of such person in acquiring" in the first sentence and inserting in lieu thereof "cost of acquiring";

(2) by inserting after the first sentence the following: "The cost referred to in the preceding sentence is the cost actually incurred by or on behalf of such person or the cost prepaid by the deceased individual, as the case may be."; and

(3) by striking out "the preceding sentence" and inserting in lieu thereof "this subsection".

SEC. 502. CREMATED REMAINS IN ARLINGTON NATIONAL CEMETERY.

(a) In General.—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

§ 1010. Burial of cremated remains in Arlington National Cemetery

"The Secretary of the Army shall designate an area of appropriate size within Arlington National Cemetery for the unmarked interment of the ashes of persons eligible for interment in Arlington National Cemetery whose remains were cremated and shall prescribe regulations for such interments. The area selected by the Secretary shall be an area that is not suitable for the burial of casketed remains.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1010. Burial of cremated remains in Arlington National Cemetery.".

SEC. 503. NEW ARIZONA NATIONAL CEMETERY.

(a) APPOINTMENT OF EMPLOYEES.—The Secretary of Veterans Affairs may, without regard to laws relating to appointments in the competitive service, employ in a position in the Department of Veterans Affairs in connection with the administration of the Arizona Veterans Memorial Cemetery transferred to the Department pursuant to section 346 of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 541) any person who (1) was employed by the State of Arizona in connection with the administration of such cemetery on the day before the date of the transfer, and (2) meets the criteria and qualifications established by the Secretary for employment in such position.

(b) OPERATING BUDGET PLAN.—(1) For each of fiscal years 1989, 1990, and 1991, the Secretary of Veterans Affairs shall prepare an operating budget plan for the administration of the Arizona Veterans Memorial Cemetery referred to in subsection (a).

(2) The operating budget plan for a fiscal year shall include the anticipated sources of funds for such fiscal year, the Secretary's estimate of any budget deficit (taking into consideration the operating needs of the cemetery for such fiscal year and the limitations and requirements in section 346(f) of the Veterans' Benefits and Services Act of 1988), and the Secretary's estimate of the workload for such fiscal year.

(3) The Secretary shall transmit the budget operating plan for a fiscal year to the Committees on Veterans' Affairs of the Senate and House of Representatives—

(A) in the case of fiscal year 1989, not later than 30 days after the date of the enactment of this Act;

(B) in the case of fiscal year 1990, not later than October 1, 1989; and

(C) in the case of fiscal year 1991, not later than February 1, 1990.

TITLE VI—MINORITY AFFAIRS

SEC. 601. ASSIGNMENT OF MINORITY ISSUES TO AN ASSISTANT SECRETARY OF VETERANS AFFAIRS.

(a) POSITION AND FUNCTIONS OF ASSISTANT SECRETARY.—Section 4 of the Department of Veterans Affairs Act (Public Law 100-527; 102 Stat. 2638) is amended by adding at the end of subsection (b) the following new paragraph:

"(11) The review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans and the coordination and monitoring of policies facilitating access of such veterans to services and benefits provided under laws administered by the Department.".

(b) "MINORITY VETERANS" DEFINED.—Section 4 of such Act is further amended by adding at the end the following new subsection:

"(g) DEFINITIONS.—As used in this section:

"(1) The term 'minority veterans' means veterans who are—

"(A) black individuals;
"(B) Native Americans;
"(C) Hispanic-Americans;
"(D) Asian-Americans;
"(E) Pacific-Islander-Americans; and
"(F) women.

"(2) The term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code.

"(3) The term 'Native American' means an Indian, a Native Hawaiian, or an Alaska Native.

"(4) The term 'Indian' has the meaning given that term in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a)).

"(5) The term 'Native Hawaiian' has the meaning given that term in section 815(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992c(3)).

"(6) The term 'Alaska Native' has the meaning given the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

"(7) The term 'Asian-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent of Asia.

"(8) The term 'Pacific-Islander-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Pacific Islands.".

SEC. 602. REESTABLISHMENT OF THE ADVISORY COMMITTEE ON NATIVE AMERICAN VETERANS.

(a) Establishment.—Effective October 1, 1989, the Advisory Committee on Native-American Veterans established by section 19032 of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388) is reestablished.

(b) Incorporation of Provisions of Prior Law.—Subsections (b) through (e) and (g) of section 19032 of the Veterans' Health-Care Amendments of 1986 shall apply to the Advisory Committee on Native-American Veterans reestablished by subsection (a).

(c) Reports.—(1) Not later than March 31, 1990, and March 31, 1991, the Committee shall submit to the Secretary of Veterans Affairs a report containing the findings and any recommendations of the Committee regarding the matters described in section 19032(b) of the Veterans' Health-Care Amendments of 1986, and the matters described in section 603 of this Act, that were examined and evaluated by the Committee during the fiscal year preceding the fiscal year in which the report is submitted.

(2) Not later than 60 days after receiving each such report, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(d) Termination.—The Committee shall terminate 90 days after the date on which the second report is transmitted by the Committee pursuant to subsection (c).

SEC. 603. STUDY OF HOME LOANS TO NATIVE-AMERICAN VETERANS.

(a) Study Required.—The Secretary of Veterans Affairs shall conduct a study to determine the following:

(1) The extent to which veterans who are Native Americans living on Native-American trust lands participate in the Department of Veterans Affairs home loan guaranty program under chapter 37 of title 38, United States Code.

(2) Whether the level of participation of such veterans in such program is lower than the level of participation of all veterans and, if so the reasons for the lower level of participation, including any reasons relating to the structure of the home loan guaranty program, cultural factors, and attitudinal factors.

(3) What, if any, legislative, regulatory, and administrative actions are necessary to improve the access of the veterans referred to in paragraph (1) to benefits under chapter 37 of title 38, United States Code.

(4) Whether it would be desirable, feasible, and equitable to utilize the direct home loan authority under section 1811 of title 38, United States Code, to promote increased home ownership among such veterans.

(b) Considerations.—In conducting the study, the Secretary shall consider—

(1) the concerns and recommendations of the Advisory Committee on Native-American Veterans contained in the reports submitted by that committee pursuant to section 19032(f) of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388); and

(2) the experience of the Bureau of Indian Affairs and the Department of Housing and Urban Development in developing and carrying out programs designed to meet the home financing needs of Native Americans.

(c) Report.—Not later than March 1, 1990, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the results of the study conducted under subsection (a).

(d) Definitions.—For the purposes of this section—

(1) the term "Native-American trust land" means any land that—

(A) is held in trust by the United States for Native Americans;

(B) is subject to restrictions on alienation imposed by the United States on Indian lands;

(C) is owned by a Regional Corporation or a village corporation, as such terms are defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); or

(D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary of Veterans Affairs; and

(2) the term "Native American" means—

(A) an Indian, as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a));

(B) a Native Hawaiian, as defined in section 8 of the Native Hawaiian Health Care Act of 1988 (Public Law 100-579; 102 Stat. 2921);

(C) an Alaska Native, within the meaning provided for the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

(D) a Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

TITLE VII—MISCELLANEOUS

SEC. 701. SECURITY SERVICES.

(a) SECURITY AND LAW ENFORCEMENT FUNCTIONS.—Section 218 is amended by adding at the end the following new subsection:

"(f) The Secretary may not delegate the functional and technical supervision of the performance of security and law enforcement functions under this section to any official outside the Office of the Secretary.".

(b) REPORT ON SECURITY AND LAW ENFORCEMENT MATTERS.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(1) the Secretary's plan for improving the training, recruitment, retention, and pay of security and law enforcement personnel of the Department of Veterans Affairs; and

(2) the Secretary's assessment of—

(A) the need, after considering potential alternatives, for establishing a policy on the issuance of weapons to such personnel assigned to medical centers of the Department located in high-crime areas and the use of weapons by such personnel;

(B) various options available to the Secretary for providing improved protection for such personnel assigned to medical centers referred to in subclause (A);

(C) various options available to the Secretary for providing improved protection for such personnel assigned to medical centers of the Department not located in high-crime areas;

(D) the adequacy of the number and deployment of security and law enforcement personnel at each of the Department medical centers.

SEC. 702. EXPANSION OF MULTIYEAR PROCUREMENT AUTHORITY TO INCLUDE NON-MEDICAL ITEMS.

(a) IN GENERAL.—Section 114 is amended—

(1) by striking out the heading and inserting in lieu thereof the following:

"§ 114. Multiyear procurement";

(2) in subsection (a), by striking out "for use in Veterans' Administration health-care facilities";

(3) in subsection (b)(2)(A), by striking out "health-care"; and

(4) in subsection (e)—

(A) by striking out paragraph (2); and

(B) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 is amended by striking out the item relating to section 114 and inserting in lieu thereof the following:

"114. Multiyear procurement.".

SEC. 703. NOTICE OF PROCEDURAL RIGHTS AND OTHER INFORMATION.

(a) IN GENERAL.—Chapter 71 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 4011. Notice of procedural rights and other information

"(a) In the case of a claim for benefits under laws administered by the Department of Veterans Affairs, the Secretary, as to proceedings other than proceedings before the Board, or the Chairman of the Board, as to proceedings before the Board, shall, at each procedural stage relating to the disposition of such a claim, beginning with the decision after an initial review or determination, and including the furnishing of a statement of the case and the making of a final decision by the Board, provide to the claimant and such claimant's authorized representative, if any, written notice of the procedural rights of the claimant and the rationale for the decision, including a summary of the evidence (or lack of evidence) supporting the decision.

"(b) The notice required by subsection (a) of this section shall be on such forms as the Secretary or the Chairman, respectively, shall prescribe and shall include, in easily understandable language, with respect to proceedings before the Department of Veterans Affairs the following:

"(1) Descriptions of all subsequent procedural stages provided for by statute, regulation, or Department of Veterans Affairs policy.

"(2) Descriptions of all rights of the claimant expressly provided for in or pursuant to this chapter, of the claimant's rights to a hearing, to reconsideration, to appeal, and to representation, and of any specific procedures necessary to obtain the various forms of review available for consideration of the claim.

"(3) In the case of an appeal to the Board, the opportunity for a hearing before a traveling section of the Board.

"(4) Such other information as the Secretary or the Chairman of the Board, respectively, as a matter of discretion, determines would be useful and practical to assist the claimant in obtaining full consideration of the claim.".

(b) The table of sections at the beginning of chapter 71 is amended by adding at the end thereof the following new item:

"4011. Notice of procedural rights and other information.".

SEC. 704. USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

(a) DISCLOSURE OF RETURN INFORMATION.—Paragraph (7)(D) of section 6103(l) of the Internal Revenue Code of 1986 is amended—

(1) by striking out "and" at the end of clause (vi);

(2) by striking out the period at the end of clause (vii) and inserting in lieu thereof "; and";

(3) by adding at the end the following new clause:

"(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or any other law administered by the Department of Veterans Affairs;

"(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

"(III) health-care services furnished under sections 610(a) (1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of title 38, United States Code; and

"(IV) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total; except that, in such cases, only wage and self-employment information may be disclosed."; and

(4) by inserting before the period at the end of the heading "**or to the Department of Veterans Affairs**".

(b) PROTECTION AGAINST IMPROPER USE OF RETURN INFORMATION.—(1) Chapter 53 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3117. Protection of benefit applicants and recipients from improper use of certain information

"(a)(1) In order to protect applicants for and recipients of the benefits and services described in paragraph (2) of this subsection from the improper use of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(D)(viii)), the Secretary may not terminate, deny, suspend, or reduce any such benefits or services of an individual until the Secretary has complied with the requirements in section 1137(c) of the Social Security Act (42 U.S.C. 1320b-7(c)), and such requirements shall be fully applicable in the case of such benefits and services.

"(2) The benefits and services described in this paragraph are—

"(A) needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Department of Veterans Affairs;

"(B) parents' dependency and indemnity compensation provided under section 415 of this title;

"(C) health-care services furnished under sections 610(a) (1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of this title; and

"(D) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total.

"(b) In the case of compensation described in subsection (a)(2)(D) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment data referred to in subsection (a) of this section only if the Secretary finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3116 the following new item:

"3117. Protection of benefit applicants and recipients from improper use of certain information.".

(c) INITIAL NOTIFICATION OF INCOME VERIFICATION.—Not later than 90 days after the date of the enactment of this Act and prior to obtaining information from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, the Secretary of Veterans Affairs shall notify applicants for and recipients of the benefits described in subsection (a)(2) (A), (B), and (D) of section 3117 of title 38, United States Code (as added by subsection (b)), that income information furnished by such applicants and recipients may be compared with information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. Thereafter, the Secretary shall notify all new applicants for such benefits and for services described under subsection (a)(2)(C) of such section 3117 that income information furnished by them may be so compared and shall periodically renotify all recipients of such benefits and services.

(d) PAYMENT OF ADMINISTRATIVE COSTS.—The costs incurred by the Secretary in obtaining, verifying, and using information disclosed pursuant to the amendments made by subsection (a) shall be paid for out of the Department of Veterans Affairs compensation and pension account, and amounts collected as a result of such actions shall be paid into such account.

SEC. 705. COURT OF VETERANS APPEALS.

(a) EXCLUSIVE JURISDICTION.—Notwithstanding section 402 of the Veterans' Judicial Review Act and section 4052(a) of title 38, United States Code, the jurisdiction of the Court of Veterans Appeals to review decisions of the Board of Veterans' Appeals with respect to a matter covered by sections 775 and 784 of such title or a matter arising under chapter 37 of such title shall not be exclusive in cases in which a notice of disagreement is filed under section 4004 of such title before the end of the 30-day period beginning on the date of the enactment of this Act.

(b) JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS.—(1) Section 308 of the Ethics in Government Act of 1978 (28 U.S.C. App. 308) is amended—

(A) in clause (9), and inserting "United States Court of Veterans Appeals;" after "Appeals;"; and

(B) in clause (10)—

(i) by striking out "or" the first place it appears; and

(ii) by inserting a comma and "or of the United States Court of Veterans Appeals" after "Appeals".

(2) Not later than 30 days after the date of the enactment of this Act, each person who, on that date, is a judge of the United States Court of Veterans Appeals or a judicial employee of such court and each person who, before that date, has been nominated by the President to be a judge on such court shall file a report containing the information described in section 302(b) of the Ethics in Government Act of 1978 (28 U.S.C. App. 302(b)). Subsections (e), (f), and (g) of section 302 of such Act shall apply to the requirement in the preceding sentence.

The amendment is as follows:

Strike out all after the enacting clause as follows:

INTRODUCTION

BILLS

On January 25, 1989, S. 13 was introduced by the Chairman of the Committee, Senator Alan Cranston. Joining later as cosponsors were Committee Members Spark M. Matsunaga, Dennis DeConcini, John D. Rockefeller IV, George J. Mitchell, and Bob Graham, and Senators Quentin N. Burdick, John F. Kerry, and Jeff Bingaman. As introduced, S. 13 would have (1) provided, effective, December 1, 1989, for a cost of living adjustment (COLA), equivalent to and effective on the same date as the COLA which will be provided for Social Security benefits in VA compensation paid to veterans with service-connected disabilities and in disability and indemnity compensation (DIC) paid to certain survivors of such veterans; (2) provided, effective January 1, 1990, a 13.8-percent COLA in (a) the allowances paid to certain service-connected disabled veterans dependents or survivors pursuing educational programs under chapter 35 of title 38, and (b) the allowances paid to service-connected disabled veterans participating in programs of rehabilitation under chapter 31 of title 38; (3) expanded the annual clothing allowance provided to veterans so as to include cases in which veterans with service-connected skin conditions use medications which stain their clothing; (4) provided that monthly pension payments to hospitalized veterans with no dependents could not be reduced until the veteran has been hospitalized for 8 months—with extensions authorized, for no more than two 2-month periods, if the Chief Medical Director (CMD) determines that the veteran is likely to be released in a reasonable period of time—and raised the limit on such reduced pension payments from $60 to $105; (5) extended the veterans readjustment appointment authority for Civil Service appointments for two years, through December 31, 1991, for Vietnam-era veterans who (a) have a service-connected disability, or (b) served in the Vietnam theater of operations; (6) expanded VA's multiyear procurement authority to include the purchase of non-health-care supplies and services; (7) required VA to furnish post-traumatic stress disorder (PTSD) treatment to a veteran who served in a theater of combat operations and whom a VA mental health professional has diagnosed as suffering from service-related PTSD; (8) mandated that the VA's Special Committee on Post-Traumatic Stress Disorder submit concurrently to VA and the Congressional Veterans' Affairs Committees three further reports by February 1, 1992; (9) required VA to carry out a study of post-war psychological problems among certain groups of minority veterans; (10) required VA to submit, as part of its annual budget documents, detailed information on funds that are estimated to be spent for various PTSD-related VA efforts; (11) required VA to furnish services to a veteran or veteran's spouse to achieve pregnancy in cases in which the veteran's service-connected disability impairs procreative ability; (12) modified the existing authority pursuant to which compensated work therapy (CWT) programs are carried out in VA so as to (a) allow such programs to contract with government entities, including VA, as well as with private industry sources specified in current law, for the work that the participating patients do, and (b) to allow funds from the revolving fund which supports the CWT program to be used for training and related management functions, including travel, necessary for the operation of the CWT program; (13) extended for three years, through FY 1992, the authorization of such annual appropriations as are necessary for State Veterans' Home construction grants; (14) required VA (a) to carry out a four-year pilot program under which it would (i) provide up to 20 specially trained monkeys to certain service-disabled veterans who are quadriplegic, (ii) be authorized to provide up to ten specially trained service dogs to such quadriplegic veterans, and (iii) facilitate the provision of monkeys to not more than 20 other veterans who are quadriplegic, and (b) to conduct an evaluation of this program; (15) required VA (a) to conduct a pilot program for the provision of up to 20 dogs specially trained to provide hearing assistance to individuals who are deaf to veterans with service-connected hearing impairments, and (b) to conduct an evaluation of this program; (16) required (a) that the Assistant Secretary of Veterans Affairs who is responsible for management, productivity, and logistic support functions be responsible for the technical and functional supervision of Security Services at VA medical facilities, and (b) that VA, within 90 days after enactment, submit a report containing (i) a plan for upgrading its security police training, recruitment, and salaries, and (ii) an evaluation of the need for (A) establishing a policy on weapons for the VAMC's in high-crime areas, and (B) reducing VA security police services in certain VA facilities with no significant security problems; (17) revised VA's authority to enter into agreements for sharing scarce medical resources so as to (a) expand the categories of facilities with which the VA may enter into sharing agreements to include all health-care facilities, (b) provide flexibility in the establishment of reimbursement rates, and (c) provide that payments for the use of VA resources be returned to the VA facility involved; (18) provided that labor-management standards affecting title 38 employees—principally physicians, dentists, and nurses—are generally the same as title 5 employees; (19) provided that the procedures in title 5 of the resolution of specified lesser disciplinary actions generally would be used in cases involving title 38 VA health-care personnel and created in title 38 a grievance-resolution process for title 38 employees that parallels that available to title 5 employees; (20) required the Secretary of Veterans Affairs to establish a task force to identify inconsistencies among certain provisions of law relating to eligibility for certain health-care benefits and to recommend legislation to remedy the inconsistencies.

On January 25, 1989, S. 86 was introduced by Chairman Cranston and cosponsored by the Committee's Ranking Minority Member, Senator Frank H. Murkowski and Committee Members Matsunaga, DeConcini, Rockefeller, and Graham. Joining later as a cosponsor was Senator Bingaman. S. 86 would authorize the appropriation of $3.125 million for FY 1990 and $6.25 million for each of FYs 1991–1993 for the establishment and operation of five mental illness research, education, and clinical centers (MIRECCs), patterned after VA's program of geriatric research, education, and clinical centers—with at least one MIRECC required to be established by July 1, 1990.

On January 24, 1989, S. 109 was introduced by Senator Daniel K. Inouye. S. 109 would provide for the payment of incentive special pay to VA psychologists who obtain certain board certifications in professional specialties.

On January 25, 1989, S. 192 was introduced by Committee Member Matsunaga and was cosponsored by Chairman Cranston and Senator Inouye. S. 192 would require the Secretary to provide for the conduct of a study of the prevalence and incidence of psychological problems in readjusting to civilian life among veterans in certain specified minority groups which were not studied as part of the study mandated by section 102(a)(1) of Public Law 98-160.

On February 9, 1989, S. 405 was introduced by Chairman Cranston and was cosponsored by Committee Members DeConcini and Matsunaga. Joining later as a cosponsor was Senator Bingaman. S. 405 would (1) extend for three years, FYs 1990-1992, VA's program of providing community-based residential treatment for homeless chronically mentally ill veterans; (2) authorize VA to include in the program veterans who have service-connected chronic mental illness disabilities, chronically mentally ill veterans with service-connected disabilities rated at 50 percent or more, and chronically mentally ill veterans receiving VA hospital or nursing home care.

On March 9, 1989, S. 564 was introduced by Senator Matsunaga and was cosponsored by Chairman Cranston, Ranking Minority Member Murkowski, Committee Members Mitchell and DeConcini and Senator Inouye. Joining later as cosponsors were Committee Members Rockefeller and Graham and Senators Barbara A. Mikulski, Quentin N. Burdick, Nancy Landon Kassebaum, Jeff Bingaman, John W. Warner, Harry Reid, Carl Levin, Donald W. Riegle, Jr., Terry Sanford, and Richard C. Shelby. S. 564 would provide for an Assistant Secretary of Veterans Affairs to be responsible for the development and implementation of policies facilitating the access of members of minority groups, including women, to VA benefits and services.

On March 15, 1989, S. 574 was introduced by Ranking Minority Member Murkowski, and cosponsored by Committee Members Alan K. Simpson and James M. Jeffords. S. 574 would (1) authorize the provision of specially-trained simians and dogs to assist quadriplegic veterans and require a report on the experience in doing so through FY 1992; (2) repeal the authority to furnish tobacco to veterans; (3) extend for two years, through FY 1991, the authority to furnish respite care and for one year, until February 1, 1990, the deadline for the report evaluating such care; (4) provide for a program to evaluate noninstitutional care alternatives to nursing home care; and (5) authorize the payment of premium pay for certain nursing assistants.

On April 11, 1989, S. 748 was introduced by Chairman Cranston at the request of the Administration. S. 748 would (1) extend for five years, through FY 1994, the authorization of appropriations for State Veterans Home construction grants; (2) extend for two years, through FY 1991, VA's authority to furnish respite care to certain chronically ill veterans and for one year, to February 1, 1990, the deadline for the report evaluating such care; (3) extend the authorization for outpatient dental services to include furnishing care when medically necessary in preparation for hospital admission;

and (4) increase from $500 to $1,000 the amount which a fee-basis dentist can charge prior to obtaining a VA second examination

On April 19, 1989, S. 846 was introduced by Ranking Minority Member Murkowski. S. 846 would first, extend through 1994 VA's pilot program for homeless chronically mentally ill veterans established pursuant to section 115(d) of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322); second, expand the contracting authority of VA's Compensated Work Therapy (CWT) program so as to allow for the programs to contract with VA or any other Governmental agencies or departments; third, authorize VA to establish transitional housing for veterans participating in the Compensated Work Therapy program; fourth, permit VA to purchase, lease, or otherwise acquire houses to be operated by VA as transitional housing for veterans participating in the CWT program; fifth, authorize VA to establish non-profit corporations to provide a flexible funding mechanism for the conduct of CWT programs; and sixth, require VA to transfer $1.625 million and authorize the transfer of up to $5 million to the special therapeutic and rehabilitation activities fund from funds appropriated for the conduct of the homeless chronically mentally ill program.

On May 2, 1989, S. 898 was introduced by Chairman Cranston at the request of the Administration. S. 898 would (1) expand the circumstances under which veterans may obtain VA-guaranteed refinancing loans for the full value of the property; (2) permanently allow sales of vendee loans with or without recourse and eliminate the current reporting requirements for nonrecourse sales; (3) extend for two years, through September 30, 1991, the 1-percent fee for VA-guaranteed loans and vendee loans; (4) eliminate or cut back certain home-site standards and inspection requirements for manufactured housing purchased with VA-guaranteed loans; (5) repeal the requirement for local officials' statements regarding water and sewerage systems as a condition of the VA guaranties of loans for the purchases of certain new homes; (6) expand VA's authority to obtain offsets of federal tax refunds for debts arising from the VA loan guaranty program; (7) limit the time allowed for a veteran to request waiver of a home-loan debt to VA; (8) correct a technical inconsistency between home-loan guaranty eligibility provision for to active-duty servicemembers and the definition of "veterans"; and (9) make permanent the "no-bid" formula for determining whether will VA acquire at foreclosure a home that secures a VA-guaranteed loan.

On May 2, 1989, S. 899 was introduced by Chairman Cranston at the request of the Administration. S. 899 would authorize the Secretary to establish and conduct, for five years, leave-transfer and leave-bank programs for medical emergencies of VA health-care employees who are appointed pursuant to section 4108 of title 38, United States Code.

On May 2, 1989, S. 900 was introduced by Senator Rockefeller and cosponsored by Chairman Cranston. S. 900 would extend for one year, through FY 1990, VA's authority to furnish respite care to certain chronically ill veterans and, until February 1, 1990, the deadline for a report evaluating such care.

On May 9, 1989, S. 947 was introduced by Chairman Cranston and cosponsored by Committee Members Mitchell, Matsunaga, Rockefeller, Graham and DeConcini and Senators Inouye, Kohl, Pell, Wirth, and Kerry. Joining later as a cosponsor was Senator Bingaman. S. 947 would (1) ensure that basic rates of pay for nurses and certain other health-care professionals are sufficient to be competitive with non-Department health-care facilities; (2) adjust overtime pay for certain registered nurses; (3) provide for a head nurse pay differential; (4) provide for a waiver of reduction in military retired pay for certain VA health-care professionals; (5) increase the cap on special pay rates for VA health-care professionals; (6) reduce the time period in which the President must act on special pay rate requests; (7) provide for cash awards for nurses who obtain recertification; (8) provide for both performance and recognition cash awards for VA supervisors and managers; (9) authorize a dependent care assistance program meeting the requirements for such a program under the Internal Revenue Code; (10) require the establishment of leave-transfer programs, and authorize the establishment of leave banks for medical emergencies of VA health-care personnel; (11) require the equitable allocation of VA Health Professional Scholarships to students enrolled in Associate degree programs; (12) authorize appropriations for health-personnel educational institutions for the purposes of assisting them to upgrade and expand their programs; (13) authorize VA to hire certain health-care personnel without regard to the civil service register process; and (14) require a pilot program of certain pay and management practices to enhance recruitment and retention of health-care professionals and submission of periodic reports evaluating such programs.

On May 16, 1989, S. 1003 was introduced by Chairman Cranston at the request of the Administration. S. 1003 would (1) make voluntary the vocational evaluations of new VA pensioners under age 50 in connection with the temporary program of vocational training for veteran-pensioners; (2) establish a trial-work period for participants in vocational training under the temporary program; (3) authorize the service Secretaries to broaden the secondary-school-equivalency criteria for Montgomery GI Bill (MGIB) participation; (4) establish a 14-day period after entry on active duty within which an individual may elect not to participate in the MGIB; (5) make permanent the program of independent living services for certain veterans with very severe service-connected disabilities; (6) eliminate advance payment of work-study allowances; (7) make the work-study program available to service-disabled veterans pursuing training on a less-than-full-time but more than-half-time basis who either (a) are participating in a VA rehabilitation program for service-disabled veterans, or (b) have service-connected disabilities rated at 50 percent or more and are training under the Vietnam-era GI Bill; (8) eliminate advance payments of rehabilitation subsistence allowances; (9) allow VA to accept a school's certification for renewal of an individual's benefits following termination of the individual's benefits for unsatisfactory conduct or progress; (10) simplify the measurement of the pursuit of combined clock-hour and credit-hour courses; and (11) make a series of technical amendments in title 38 provisions relating to educational assistance.

On May 16, 1989, S. 1004 was introduced by Chairman Cranston at the request of the Administration. S. 1004 would (1) revise the methodology for determining VA's maximum rates of payments for community nursing home care; (2) extend reimbursements for emergency care of vocational rehabilitation participants; (3) extend the use of the Director grade to VA Central Office; (4) extend the time period for temporary full-time and student appointments; (5) reorganize VA Canteen Service management; and (6) extend the duration of, and the funding and reporting requirements for the pilot program of community-based residential care for homeless chronically mentally ill and other veterans.

On June 1, 1989, S. 1092 was introduced by Chairman Cranston and cosponsored by Ranking Minority Member Murkowski and Committee Member Matsunaga. Joining later as a cosponsor was Committee Member Rockefeller. S. 1092 would (1) allow VA's work-study allowance to be based on the higher of the Federal hourly minimum wage or the applicable State hourly minimum wage—rather than simply the Federal minimum wage as under current law; (2) expand eligibility for VA's work-study program to include students training under the program of educational assistance for certain dependents and survivors of service disabled veterans; (3) include students training under the program of rehabilitation services for veterans with service-connected disabilities in the count of those on whose behalf the reporting fee is paid; (4) eliminate the difference in the attendance requirements for "degree" and "non-degree" training; (5) repeal the limit on the number of changes of educational program permitted and institute an education or vocational counseling requirement for each change of program beyond the first change; (6) provide the Secretary with the discretionary authority under all VA-administered educational assistance programs to require monthly student self-verification of training for both degree and non-degree training for all rates of training; (7) specify that "mitigating circumstances"—which excuse a veteran from repayment of part of the benefits received for a course from which the veteran withdrew—include difficulties beyond the control of the veteran in making or changing child-care arrangements; (8) provide that the effective date of adjustments in a student's educational benefits based on a change in training time be the date of the change rather than, as under current law, the end of the month in which the change occurs; (9) modify the criteria for determining waiver or applicability of both the "2-year" rule and the "85–15" rule for a certain course provided under contract with the Department of Defense to take into account individuals training under the educational assistance program for members of the Selected Reserve or the Ready Reserve; (10) and make those same students eligible for VA's work-study program.

On June 1, 1989, S. 1110 was introduced by Chairman Cranston at the request of the Administration. S. 1110 would authorize VA to require the disclosure of claimants' and dependents' Social Security numbers in claims for disability and death benefits for which income status is not an eligibility criterion.

On June 7, 1989, S. 1141 was introduced by Senator Graham and was cosponsored by Chairman Cranston and Ranking Minority Member Murkowski. S 1141 would require the Secretary of the Army to set aside an appropriate area in Arlington National Cemetery for the unmarked burial of cremated remains.

On June 7, 1989, S. 1145 was introduced by Senator Matsunaga. S. 1145 would reestablish, through FY 1991, the Advisory Committee on Native-American Veterans with a smaller membership.

On June 7, 1989, S. 1146 was introduced by Senator Matsunaga. S. 1146 would require the Secretary to conduct a 2-year (FYs 1990–1991) pilot program of direct housing loans to Native American veterans for the purchase of housing on certain trust or communally-owned lands.

On June 8, 1989, S. 1147 was introduced by Chairman Cranston at the request of the Administration. S. 1147 would authorize payment of the headstone allowance for grave markers prepurchased by veterans before their deaths.

On June 9, 1989, S. 1158 was introduced by Chairman Cranston. S. 1158 would (1) create a new revolving fund, known as the Home Loan Guaranty Fund (HLGF), to finance the VA home loan guaranty program with respect to loans made or assumed after September 30, 1989; (2) provide for crediting to the HLGF an amount equal to 0.25 percent of the loan amount for each of the first three years on guaranteed loans made after September 30, 1989; (3) require the Secretary of the Treasury to invest surplus funds of the HLGF in government securities; (4) generally increase the loan fee from 1 percent to 1.25 percent of the loan amount but reduce the fee to 0.75 percent if the veteran makes a downpayment of at least 5-percent and to 0.25 percent for a 10-percent downpayment; (5) increase the fee for assumptions from one-half percent to two-thirds of one percent; (6) continue the current 1-percent fee for vendee loans; (7) require VA to pay the loan fee for all veterans with compensable disabilities and for surviving spouses of veterans who died from service-connected disabilities; (8) allow the Secretary—after first providing the Congressional Committees on Veterans' Affairs with advance notice at the time the President submits the budget in mid-January—on or after the ensuing October 1 to increase all loan and assumption fees uniformly to not more than 20 percent more that the statutorily prescribed percentages if the Secretary determines such an increase is necessary to keep the HLGF solvent; (9) require the Director of the Congressional Budget Office to provide the Committees with an asessment of any Secretarial finding relating to insolvency; (10) eliminate liability to VA for any loss resulting from default on a VA-guaranteed home loan for anyone who pays a fee, or is exempted from paying a fee, after September 30, 1989, except (a) in the case of fraud, misrepresentation, or bad faith by such individual in obtaining the loan or approval of an assumption of the loan, or in connection with a default, and (b) in the case of any default resulting from circumstances not beyond the borrower's control; (11) extend for one year, to October 1, 1990, the current expiring authority for VA to sell loan assets either with or without recourse and the requirement for VA to justify and explain each such loan asset sale in a report to the Committees on Veterans' Affairs; (12) require that all amounts received from recourse and nonrecourse loan asset sales be credited, without reduction, as offsetting collections of the Loan Guaranty Revolving Fund or the HLGF, depending on which fund received the fee for the loan involved; (13) allow a veteran to acquire additional loan guaranty entitlement—up to $10,000—for a particular loan by paying a

0.1-percent fee for each additional $1,000 of entitlement, or portion thereof; (14) require, in the cases of purchased entitlement, that the total of the guaranty and any downpayment could not exceed 25 percent of the purchase price, except where, under regulations prescribed by the Secretary, the Secretary grants a waiver of this requirement in order to enable a veteran to use a VA-guaranteed loan in a market where lenders would otherwise charge so many points as to make it unlikely for the veteran to be able to use his or her VA entitlement to acquire a home; (15) require a lender to notify VA when the lender refuses a tender of partial payment by a veteran and to state the circumstances of the veteran's default and the reasons for the refusal; (16) extend by two years, through FY 1991, the statutory formula (known as the "no-bid" formula) by which VA determines whether it will acquire at foreclosure the property securing a VA-guaranteed loan; and (17) prohibit VA from considering the cost of borrowing funds in determining the net value of a property for purposes of the no-bid formula, except to the extent of one-half of the amount by which the cost of borrowing the funds necessary to acquire the property exceeds the cost of borrowing the funds that would be needed to pay the guaranty.

On June 14, 1989, S. 1188 was introduced by Ranking Minority Member Murkowski. S. 1188 would (1) require that there be disclosed to VA (a) for purposes of determining eligibility for VA needs-based pension programs, parents' DIC, and VA health-care services based on income status, the same kinds of data from the tax returns of third parties as are disclosed to Federal, State, and local agencies administering various Federal or Federally-assisted income-tested programs, and (b) only wage and self-employment information from such returns for purposes of determining eligibility for compensation paid at the total-disability-rating level based on an individual determination of unemployability; (2) allow VA, in the case of compensation beneficiaries with total-disability ratings based on individual unemployability, to verify or otherwise act upon wage or self-employment data only if the Administrator finds that the amount and duration of the earnings reported therein clearly indicate that the individuals may no longer be qualified for a rating of total disability; (3) prohibit the Secretary from using such tax information without first complying with the Social Security Act requirements relating to independent verification of such data, notification to the individual concerned, and allowing the individual fair opportunity to contest agency findings based on such information; (4) establish as a condition of income-based VA health-care eligibility that the veteran be notified that VA may compare the income information provided by the veteran with information obtained from the Commissioner of Social Security or the Secretary of the Treasury; (5) require, within 90 days after the date of enactment and before obtaining such return information, that VA notify benefit recipients and applicants that income reported to VA will be subject to verification against such return information; and (6) provide that VA's costs of establishing and operating the program under which the return information would be obtained, used, and verified would be paid for out of VA's compensation and pension account, and that amounts collected as a result of the program would be paid into that account.

On June 20, 1989, S. 1211 was introduced by Chairman Cranston and was cosponsored by Committee Members Matsunaga, DeConcini, and Mitchell. S. 1211 would overturn a 1982 administratively-imposed reduction in the amount of special pay authorized for VA physicians and dentists.

On June 23, 1989, S. 1279 was introduced by Ranking Minority Member Murkowski. S. 1279 would (1) extend for two years, through calendar year 1991, the veterans readjustment appointment (VRA) authority; (2) limit the availability of VRAs to ten years after discharge for veterans who do not have compensable service-connected disabilities; and (3) expand VRA eligibility to include post-Vietnam-era veterans.

On July 12, 1989, S. 1306 was introduced by Chairman Cranston and was cosponsored by Committee Members DeConcini, Graham, Matsunaga, and Rockefeller, and Senator Bingaman. S. 1306 would (1) extend the requirement for the Secretary to conduct a pilot program of preventive health-care services; (2) expand the categories of veterans to whom VA is required to furnish such services to include all veterans who are entitled to receive the care they are receiving; (3) require that those veterans annually be offered a minimum of two preventive health-care services when they are otherwise receiving care; (4) require that each VA health-care facility annually implement a major preventive health-care and health-promotion initiative; (5) expressly provide that the permissible scope of services under the pilot program would include certain additional preventive-care services; (6) require the Secretary to submit reports on the experience under the pilot program; (7) limit pilot-program expenditures to $16 million in FY 1990, $17 million in FY 1991, $18 million in FY 1992, $19 million in FY 1993, and $20 million in FY 1994; and (8) require that the Chief Medical Director designate a Director of Preventive Health and Health Promotion Programs.

On July 13, 1989, S. 1315 was introduced by Senator DeConcini and was cosponsored by Chairman Cranston. S. 1315 would (1) authorize the Secretary, in connection with the operation of the National Memorial Cemetery in Arizona, to employ without regard to competitive service requirements persons who were employed by the State of Arizona at the cemetery when it was transferred from state-ownership to VA; and (2) require the Secretary to submit an operating budget plan for each of FYs 1989, 1990, and 1991 to the Congressional Committees on Veterans' Affairs.

On June 1, 1989, S. Amendment No. 124 to S. 13 was submitted by Chairman Cranston and was cosponsored by Committee Members Matsunaga, DeConcini, Mitchell, Rockefeller, and Graham. Amendment No. 124 would (1) require, in a 5-year pilot program (FY's 1990–1994) limited to not more than 25 sites, VA to promote and participate in the establishment of non-profit corporations with which VA would contract to run compensated-work-therapy (CWT) programs as long as the non-profit has made a commitment to, and actually runs, a Theraputic Residence (TR); (2) authorize VA to make an interest-free loan—repayable within 5 years—to the non-profit in the amount of either 25 percent of the purchase price for the TR or the total of the first year's rent it would pay for leasing a TR; (3) provide that if the non-profit were to sell the TR, the proceeds of the sale be used to repay the unpaid balance of the loan and to pay VA 50 percent of any profit; (4) authorize VA to make advance payments, from the STRAF by making those funds available in a special escrow account set up in the STRAF for up to 18 months; (5) disburse the funds upon the non-profit demonstrating that at least 25 percent of its annual TR operating expenses—over and above the expenses anticipated to be paid from VA patients' rental payments—would be paid from non-VA sources; (6) authorize VA, as part of the VA payment to the nonprofit, to provide in-kind services to the non-profit; (7) provide that services would be considered as "pass through" expenses not subject to adjustment by VA's resources allocation methodology; (8) authorize the non-profit to use the funds advanced to it by VA to acquire and operate a TR; (9) require the non-profit, when it ceases to operate the TR, to return to the STRAF, out of the proceeds from the sale of the property, any amount it owes to VA plus 50 percent of any profits from such sale; (10) authorize VA to transfer from the General Post Fund at the medical center involved to the STRAF the funds necessary for any loan or advance payment, or both, to be made to the non-profit in connection with the pilot program at that center; (11) direct the Secretary, in administering the VA home-loan guaranty program, to transfer not less than ten properties acquired by VA under that program to the Veterans Health Services and Research Administration (VHS&RA) for VHS&RA to lease the properties to non-profits which have CWT contracts and agree to use the properties as TRs; (12) require the non-profit to pay 60 percent of the rent collected from veteran residents to the medical center for subsequent transfer into the Loan Guaranty Revolving Fund; (13) require the non-profit, upon termination of the lease, to return the property to the Secretary for disposition in accordance with loan program procedures; (14) direct that any existing non-profit corporation carrying out CWT program be grandfathered in its CWT operations without regard to the provisions in the bill; (15) provide for the structure of the non-profits to be similar to that of the research non-profit corporations authorized in subchapter VI of chapter 73 of title 38, in terms of their general powers, the structure of their boards of directors (but limit VA employees to being a minority of board members), the applicability of State law, accountability, oversight, and authority to accept gifts or grants; and (16) provide that the pilot program may be conducted only at VA Medical Centers that have existing CWT programs.

On June 24, 1989, Amendment No. 391 to S. 13 was submitted by Chairman Cranston and was cosponsored by Committee Members Matsunaga and DeConcini. Amendment No. 391 would require VA, at each stage of claims adjudication proceedings in a case in which it has not fully awarded the claim, to provide the claimant and the claimant's representative, if any, with clearly written notice of the rationale for the disallowance of partial award and a detailed description of the subsequent procedural alternative through which the claim might be pursued.

On May 25, 1989, H.R. 1358 was reported by the House of Representatives' Committee on Veterans' Affairs. As reported, H.R. 1358 included provisions, among others, which would (1) prohibit individuals receiving entitlement credit under both chapter 32 of title 38 (the Post-Vietnam Era Veterans' Educational Assistance Program) and chapter 106 of title 10 (the Montgomery GI Bill for the Selected Reserve) based on the same period of service; and (2) provide that funding for a contract for the development of a national training curriculum for State approving agencies' (SAA) employees may come from the amounts made available to the SAAs by the Secretary.

HEARINGS

On May 18, 1989, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on legislation relating to health issues other than mental health—sections 211, 213-15, and 222-225 of S. 13, S. 165, S. 573, S. 574, S. 900, and S. 947 and two Administration-requested proposals—S. 748 and S. 899. Testimony was received from Deputy Secretary of Veterans Affairs Anthony J. Principi; Ms. Margaret Stafford, R.N., F.A.A.N., representing the American Nurses Association; Ms. Claudette Morrissey, R.N., President, Nurses Organization of the VA; Mr. Arte Pierce, President, National Veterans' Administration Council, American Federation of Government Employees; Ms. Marie Winslow, Legislative Liaison, National Federation of Federal Employees; and representatives of the American Legion, the Disabled American Veterans the Paralyzed Veterans of America, the Veterans of Foreign Wars, and the Vietnam Veterans of America. Testimony was also submitted for the record of the hearing by Canine Companions for Independence; Helping Hands: Simian Aides for the Disabled, Inc., the American Association for Respiratory Care, the National Association of State Veterans Homes, NAACOG—the Organization for Obstetric, Gynecological, and Neonatal Nurses, the Medical University of South Carolina, the American Association of Nurse Anesthetists, the National Association of Nurse Practitioners in Reproductive Health, and the Metropolitan Life Insurance Company.

On June 9, 1989, the Committee held a hearing, chaired by Senator Matsunaga, to receive testimony on benefits legislation—title I of S. 13, S. 564, Amendment No. 110 (to S. 190), and S. 1092; one Administration proposal—S. 1003; and legislative and other recommendations in the report of the Commission on Veterans' Education Policy. Testimony was received from Mr. R. John Vogel, Chief Benefits Director of the Department of Veterans Affairs; Lt. Gen. Donald Jones, Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy; Ms. Janet Steiger, Chairman, Commission on Veterans' Education Policy; Ms. Barbara Hollinshead, Congressional Budget Office; Ms. Bernell Dickinson, representing the American Association of Colleges and Junior Colleges; Ms. Lynn Denzin, President, National Association of Veterans Program Administrators; Col. Richard C. Kaufman, Assistant Director of Legislative Affairs, Association of the United States Army; and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, and the Uniformed Services Disabled Retirees. Testimony was also submitted by the Reserved Officers Association of the United States, the American Veterans Committee, the Fleet Reserve Association, AMVETS, the VA Advisory Committee on

Native American and Native Hawaiian Veterans, the National Association for Uniformed Services, the Vietnam Veterans of America, the Southern California Veterans Council, Inc., the National Home Study Council, Mr. Oliver E. Meadows, Chairman of the VA Advisory Committee on Education and a member of the Commission to Assess Veterans' Education Policy, and John W. Davis, James A. Kiser, Jr., and Julie Harden on behalf of 250 North and South Carolina colleges.

On June 14, 1989, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on mental health legislation—part A of title II of S. 13, S. 86, S. 192, S. 405, S. 846, and Amendment No. 124 to S. 13. Testimony was received from Dr. John Gronvall, Chief Medical Director of the Department of Veterans Affairs; Dr. Spencer Falcon, Assistant Director, National Association of VA Chiefs of Psychiatry; Dr. Kenneth Klauck, President, National Association of VA Chiefs of Psychology; and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, and the Vietnam Veterans of America.

On June 14, 1989, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on home loan guaranty and Agent Orange legislation and health-facility-security legislation and oversight—section 221 of S. 13, S. 404, S. 898, S. 1153, S. 1158, and H.R. 1415; and one Administration proposal—S. 898. Testimony was received from Senators Daschle and Kerry; Deputy Secretary of Veterans Affairs Anthony J. Principi; Ms. Nina Shepherd, Congressional Budget Office; Mr. Brian Hawkins, Chief of Security Service, West Los Angeles VA Medical Center (VAMC); Mr. John Taylor, Chief of Security Service, Dallas VAMC; Mr. Frank Watts, Chief of Security Service, Kansas City VAMC; Mr. Angelo R. Mozilo, representing the Mortgage Bankers Association of America; Mr. Jim Irvine, Chairman, Federal Government Affairs Committee, National Association of Home Builders; and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, and the Vietnam Veterans of America. Testimony was also submitted by the National Academy of Sciences, the Centers for Disease Control, the Office of Technology Assessment, the Government National Mortgage Association, the National Association of Realtors, and The First Boston Corporation.

Also, in connection with this hearing, Chairman Cranston asked the Administration and various organizations to submit their views on certain bills and draft measures then planned to be introduced. The Chairman asked VA for comments on S. 505, S. 860, S. 1145, S. 1146, S. 1211, S. 1243, and drafts of measures later introduced as S. 1346 and S. 1315. Chairman Cranston also asked the Government National Mortgage Association; the National Association of Realtors, the Mortgage Bankers Association, and the National Association of Home Builders to submit their views on S. 1146; asked the VA Advisory Committee on Native American and Native Hawaiian Veterans to submit views on that bill and S. 1145; and asked the Manufactured Housing Institute to submit views on S. 898, S. 1146, and S. 1158. In addition, he asked The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the

AMVETS, the Paralyzed Veterans of America, and the Vietnam Veterans of America to submit views on S. 505, S. 613, S. 860, S. 1110, S. 1141, S. 1145.

S. 1146, S. 1147, S. 1195, S. 1211, and S. 1243, and the two draft measures later introduced as S. 1346 and S. 1315.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearings, the Committee met in open session on July 27, 1989, and voted unanimously to report S. 13 favorably to the Senate with an amendment in the nature of a substitute which incorporated provisions from virtually all of the bills the introduction of which is noted above, as well as from original proposals by Chairman Cranston and Ranking Minority Member Murkowski.

SUMMARY OF S. 13 AS REPORTED

TITLE I—COMPENSATION AND PENSION

This title contains freestanding provisions and amendments to title 38 that would:

1. Require the Secretary of Veterans Affairs to increase, effective December 1, 1989, the rates and limitations for compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) paid to certain service-connected-disabled veterans' survivors by the same percentage (estimated at this time by the Congressional Budget Office to be 5.2 percent) as that which will be provided to Social Security recipients and VA pension beneficiaries effective on that same date, with the increased rates rounded down to the nearest dollar for those with 10- and 20-percent disability ratings and rounded to the nearest dollar for those with ratings of 30-percent and higher.

The basic increase would apply to:

(a) basic compensation rates for service-connected-disabled veterans and the rates payable for certain severe disabilities;

(b) the allowances for spouses, children, and dependent parents paid to service-connected-disabled veterans rated 30-percent or more disabled;

(c) the annual clothing allowance paid to veterans whose compensable disability requires the use of a prosthetic or orthopedic appliance (including a wheelchair) that tends to tear or wear out clothing; and

(d) the DIC rates paid to:

(i) surviving spouses of veterans whose deaths were service connected;

(ii) surviving spouses for dependent children and surviving spouses who are so disabled as to be in need of aid and attendance or to be permanently housebound; and

(iii) the children of veterans whose deaths were service connected where no surviving spouse is entitled to DIC, the child is age 18 through 22 and attending an approved educational institution, or the child is age 18 or over and became permanently incapable of self-support prior to reaching age 18 (section 101).

2. Expand the clothing allowance to include cases in which medication prescribed for a veteran's service-connected skin condition stains or otherwise damages the veteran's clothing (section 102).

3. Provide that monthly VA pension payments to veterans who are being furnished hospital care by VA and have no spouse or dependent children would be reduced when the veteran has been hospitalized for eight months (rather than the current three months), with the Secretary authorized to extend that period if VA's Chief Medical Director determines that the veteran is likely to be released from the hospital in a reasonable period of time (section 103(a)).

4. Raise from $60 to $105 the limit on monthly pension payments for veterans being furnished institutional care (section 103(b)).

5. Increase from $1,500 to $6,000 the maximum value of the estate of an incompetent veteran who has no dependents and is being furnished institutional care at government expense that is allowed before VA suspends the veteran's compensation or pension benefits; and increase from $500 to $2,000 the amount to which the veteran's estate must be reduced before suspended compensation or pension payments are resumed (section 103(c)).

TITLE II—HEALTH CARE

Part A—Mental Health

Part A of this title includes amendments to chapters 17 and 73 of title 38 that would:

1. Require VA (1) to provide treatment for post-traumatic stress disorder (PTSD) once (a) a diagnosis of the PTSD related to the veteran's service in a combat theater has been made by a mental-health professional designated by the Chief Medical Director, and (b) the veteran's combat-theater service has been verified, with verification required by the most rapid means possible; and (2) to accomplish an evaluation of a veteran within 7 days after the referral of the veteran to a VA medical center by a Vet Center (section 201).

2. Authorize VA to expand eligibility, currently provided to only Vietnam-era veterans, for readjustment counseling and follow-up mental health care to include veterans of service in theaters of operations of any prior periods of war and veterans of service in areas in which United States personnel were subjected to danger from armed conflict comparable to that of battle with an enemy during a period of war (section 202).

3. Remove the pilot program designation of VA's homeless chronically mentally ill program; extend the program for three years; and expand eligibility to include chronically mentally ill veterans with service-connected disabilities rated at 50 percent or more (section 203).

4. (1) Require the Secretary to designate not more than 5 health-care facilities as the locations for centers of mental illness research, education, and clinical activities (MIRECCs), with at least one to be designated by July 1, 1990; (2) provide that, to qualify for designation, a facility must maintain arrangements with an accredited medical school, graduate school of psychology, or nursing, social work, or other allied-health personnel school, under which

residents or students would regularly rotate through the VA facility; and (3) authorize the appropriation of $3.125 million in fiscal year 1990 and $6.25 million for each of fiscal years 1991, 1992, and 1993 for MIRECCs (section 204).

5. Extend for 3 years the reporting requirements of VA's Special Committee on PTSD and require the reports to be submitted concurrently to VA and the Congressional Committees on Veterans' Affairs (section 205).

6. Require the National Center on PTSD to provide for a study of the extent to which, and the degree of effectiveness with which, VA reaches out to, and furnishes treatment to, Vietnam veterans who are Asian Americans, Native Americans, Native Hawaiians, other Native-American Pacific Islanders, Alaska Natives, black, or Hispanic Americans, and who suffer from PTSD or other psychological problems in adjusting to civilian life (section 206).

7. Require VA to specify in its FY 1991 and FY 1992 budget documents the type and amount of resources that are proposed to be spent in the coming fiscal year on PTSD-related activities (section 207).

Part B—General Health

Part B of this title includes amendments to chapters 17 and 81 of title 38 that would:

1. Require VA (1) to furnish services to a service-connected-disabled veteran or the spouse of such a veteran to achieve pregnancy in cases in which the veteran's service-connected disability impairs procreative ability; (2) to establish an interdisciplinary task force to advise the CMD on the implementation of this provision; and (3) to furnish these services on a fee-care basis only (section 211).

2. Authorize VA compensated work therapy (CWT) programs to contract with elements of VA, as well as other private or governmental sources, to provide for the work involved (section 212 (a)).

3. Authorize the use of funds from the Special Therapeutic and Rehabilitation Activities Fund (STRAF), which is used for the operation of CWT programs, to defray the costs of travel and related expenses necessary to train and educate VA employees to administer CWT programs (section 212(b)).

4. Require VA to conduct a 5-year, two-part CWT and therapeutic residence (TR) pilot program at not more than 25 VA health-care facilities, under which VA would be required (1) at not less than 10 nor more than 15 of these sites, to promote and participate in the establishment of nonprofit corporations with which VA would contract to run CWT programs as long as the nonprofit runs a TR, and (2) directly to acquire and operate TRs for veterans participating in CWT programs at not less than 10 nor more than 15 of these sites.

(A) As to VA's contracting with nonprofit corporations for the operation of a CWT program in conjunction with a TR, provide for the following:

(i) Authorize VA to make demand-note loans to the nonprofit corporation in the amounts of (a) either 25 percent of the purchase price or the total of one year's rent in the case where the property is to be leased and, (b) the estimated cost of operating the TR for 6 months; provided that the loans would not bear interest for the first five years, and thereafter would bear a rate of interest specified by the Secretary, in consultation with the Secretary of the Treasury; provide for the loans to be made from unobligated funds in the STRAF; make the security for the note subordinate to any purchase-money mortgage; and require that, if the corporation sells the residence, the proceeds of the sale be used to repay the unpaid balance of the loan and to pay VA 50 percent of any profit realized from the sale.

(ii) Require VA to deposit the loan in an escrow account and permit the funds to be disbursed to the corporation only upon its demonstrating to VA's satisfaction that at least 25 percent of its annual operating expenses for running the TR (over and above the expenses anticipated to be paid from VA patients' rental payments) would be paid from non-VA sources (either in cash or in in-kind services).

(iii) Authorize VA to provide in-kind services (including technical and clinical expertise, building-rehabilitation supervision, and minor maintenance and repairs to the residence) to the corporation; and provide that services would be considered as "pass through" expenses and, accordingly, would not be subject to adjustment by VA's Resources Allocation Methodology or any other methodology VA uses in allocating funding to its health-care facilities.

(iv) Require the corporation, when it ceases to operate the TR, to return to the STRAF out of the proceeds from the sale of the property any loan amount it owes to VA plus 50 percent of any profits from the sale.

(v) Direct the Secretary to transfer to the Veterans Health Services and Research Administration (VHS&RA) not less than ten properties acquired by VA as a result of defaults on loans under its home-loan guaranty program, for VHS&RA to lease to nonprofit corporations, which have CWT contracts and agree to use the properties as TRs, for terms of 1 to 3 years, with renewal options permissible for up to another 3 years; require the corporation to pay to the VA health-care facility 60 percent of the rent collected from veteran residents, for subsequent transfer by VA into the appropriate loan guaranty program revolving fund; and require the corporation, upon termination of the lease, to return the property to the Secretary for disposition in accordance with loan guaranty program procedures.

(vi) Direct that any existing nonprofit corporation carrying out a CWT program be grandfathered in its CWT operations without regard to the provisions in the bill.

(vii) Provide for the structure of the CWT/TR nonprofit corporations to be similar to that of the research nonprofit corporations, which are currently authorized in subchapter VI of chapter 73 of title 38, in terms of their general powers, the structure of their boards of directors (but with VA employees limited to being a minority of board members), the applicability of State law, accountability, oversight, and authority to accept gifts or grants.

(viii) Provide that the pilot program may be conducted through nonprofit corporations only at VA health-care facilities that have existing CWT programs.

(B) As to VA's direct operation of TRs:

(i) Require VA to allow only veterans participating in VA CWT programs and a house manager to reside in a TR and to prescribe limits on the length of time a veteran may reside in a TR; charge each resident, other than the house manager, rent in a reasonable amount to be determined through procedures prescribed by the Secretary, with the rent to be deposited into the STRAF; consult with appropriate representatives of the community and comply with zoning, building-permit, and similar requirements applicable to other real property used for similar purposes in the community; meet State and local requirements relating to fire and safety standards; provide adequate federal supervision of the residents at the TRs; be responsible, through the CMD, subject to the direction and control of the Secretary, for the management, maintenance, and disposition of the properties acquired; and ensure that the proceeds, if any, resulting from the disposal of a TR, are credited to the STRAF.

(ii) Permit VA to provide house managers with free room and subsistence in addition to or instead of other compensation and require that the manager's total compensation be no less than any applicable minimum-wage rate.

(iii) Authorize the Secretary to purchase for use as TRs properties acquired by VA as a result of defaults on loans made under VA's home loan guaranty program; and require that, as payment for each such property, STRAF funds equal to the amount that would have been charged for the property if it had been sold for use as a homeless shelter under section 9 of Public Law 100-198 be transferred to the appropriate loan guaranty revolving fund.

(iv) Authorize VA to form nonprofit corporations to act solely as a funding mechanism with power to accept gifts and grants and transfer those funds to STRAF.

(C) Authorize the appropriation to the STRAF for the purposes of carrying out the CWT/TR pilot program $5 million.

(D) To the extent that less than $5 million is appropriated for this purpose, authorize the Secretary to transfer to the STRAF from unobligated funds in the General Post Fund of the VA medical facility hosting a CWT/TR program such amounts as the Secretary determines are necessary to carry out the CWT/TR pilot program.

(E) Require VA to submit, not later than February 1, 1994, to the Congressional Committees on Veterans' Affairs a report on the experience under the pilot program, including an evaluation of the impact of the loan guaranty program foreclosed property transfers to VHS&RA on VA's home loan guaranty program (section 212(c)).

5. Require that (1) VA conduct a 4-year pilot program (with a report due after 3 years) for the purposes of furnishing health, rehabilitative, and (by contract with non-VA entities) health-related services in noninstitutional settings; (2) participation in the program be limited to veterans who are eligible for and otherwise in need of nursing home care and are either (a) receiving or needing that care primarily for the treatment of a service-connected disability, or (b) have service-connected disabilities rated at 50 percent or more; (3) VA case managers be used to coordinate and facilitate services contracted for with public and private agencies; and (4) the total cost of the program during each fiscal year be limited to not more than 65 percent of the total cost that would have been incurred in furnishing the veterans involved with nursing home care instead (section 213).

6. (1) Extend until September 30, 1994, the requirement for the Secretary to conduct a pilot program of preventive health-care services; (2) expand the categories of veterans to whom VA is required to furnish such services to include all veterans who are entitled to receive the care they are receiving; (3) require that those veterans annually be offered a minimum of two preventive health-care services when they are otherwise receiving care; (4) require that each VA health-care facility annually implement a major preventive health-care and health-promotion initiative; (5) expressly provide that the permissible scope of preventive health-care services under the pilot program includes stress management, smoking cessation, physical fitness, and screening for high blood pressure, glaucoma, colorectal cancer, and cholesterol; (6) require the Secretary to submit reports on the experience under the pilot program; (7) limit pilot-program expenditures to $16 million in FY 1990, $17 million in FY 1991, $18 million in FY 1992, $19 million in FY 1993, and $20 million in FY 1994; and (8) require the CMD to designate a Director of Preventive Health and Health Promotion Programs (section 214).

7. Extend for two years, through September 30, 1991, VA's authority to furnish respite care to certain chronically ill veterans and for one year, to February 1, 1990, the due date for an evaluative report on the program to the House and Senate Veterans' Affairs Committees (section 215).

8. Require VA to conduct a 4-year pilot program under which VA would be required, as to assistive monkeys, and authorized, as to service dogs, to furnish to quadriplegic veterans who have service-connected disabilities rated 50 percent or more and to facilitate the furnishing of these assistive animals to other quadriplegic veterans (section 216).

9. Authorize VA (1) to provide signal dogs to veterans who have service-connected hearing impairments and are in need of the assistance of such a dog, and (2) to pay a veteran's expenses for necessary travel in connection with the veteran becoming adjusted to the dog (section 217).

10. Extend for three years, through September 30, 1992, the authorization of such appropriations as are necessary for State Veterans' Home construction grants (section 218).

11. Require the Secretary to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a

report by January 15, 1990, containing (1) an evaluation of the reasons for the accumulation of the backlog in VA's provision of prosthetic appliances that grew to $10.6 million dollars in FY 1989 and for the failure to observe, in connection with the provision of prosthetic appliances, the statutory priorities established for the treatment of many of the veterans involved; and (2) a description of the actions that the Secretary has taken, and is planning to take, to prevent such a recurrence of the accumulation of such a significant backlog and of failure to observe such priorities (section 219).

12. Authorize the furnishing of outpatient dental services when medically necessary in preparation for hospital admission and increase from $500 to $1,000 the amount which a fee-basis dentist can charge prior to obtaining a VA second examination (section 220).

13. Provide specific authority to the Secretary to reimburse a service-disabled veteran in a VA vocational rehabilitation program for certain emergency hospital or medical services if the veteran could not reasonably obtain those services through VA or another Federal health-care facility (section 221).

14. Repeal the Secretary's authority to provide free tobacco products to veterans receiving hospital or domiciliary care (section 222).

15. Revise VA's authority to enter into agreements for sharing scarce medical resources so as to (1) expand the categories of facilities with which VA may enter into sharing agreements to include all health-care facilities; (2) delete the requirement that reimbursement rates cover full costs and substitute a standard providing for flexibility after costs are taken into account; and (3) provide that payments for the use of VA resources be returned to the VA facility involved (section 223).

16. Require VA to establish a task force—including representatives of VA offices with responsibility for the benefits involved and appropriate representatives of concerned organizations—to recommend policies and legislation for the elimination of inconsistencies among provisions relating to eligibility for medical devices and certain other rehabilitative health-care benefits (section 224).

Part C—Health-Care Personnel

Part C of this title, entitled "Veterans Health-Care Personnel Act of 1989", includes a freestanding provision and amendments to chapters 73, 76, and 82 of the title that would:

1. (1) Require the Secretary to take steps to establish and maintain, for full- and part-time registered nurses (RNs), registered nurse anesthetists (RNAs), and certified registered nurse anesthetists (CRNAs), levels of pay which are competitive with but do not exceed the pay of employers which offer similar employment and compete in the same labor market-area for qualified employees; and (2) authorize the Secretary to establish and maintain levels of competitive pay for employees covered by title 38 for pay purposes only—the so-called "hybrid" category, which includes certain psychologists, respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists. The steps involved in establishing and maintaining such levels of pay would be as follows:

(a) individual VA facility directors would be required to perform an annual survey of comparable health-care facilities in the same labor-market area, no later than June 1, 1990 (thereafter December 1 of each year), to determine the entry-level salaries for RNs, RNAs, CRNAs, and, as determined by the Secretary, personnel in title 5/title 38 hybrid personnel categories, taking into consideration both educational preparation and years of experience;

(b) if the findings of a survey demonstrate that wages paid in the community are such that VA is no longer competitive in its efforts to recruit and retain qualified employees in one or more of the positions surveyed, step 1 of the appropriate entry pay grade would be adjusted to provide pay in an amount competitive with, but not exceeding, the wage rate paid in the labor-market area surveyed for that occupation, and additional steps within each grade and other higher, related grades would be increased correspondingly, so as to maintain the same proportional relationship between steps and grades, other than entry grades determined by the survey, as currently exists;

(c) if the findings of the survey demonstrate that wages paid in the community are competitive with but do not exceed those paid by VA, no further adjustment would be required;

(d) when making the determination as to what, if any, pay adjustment would be made, the VA facility director would pass along to the employees the annual Federal civilian personnel COLA unless the director makes an affirmative finding that doing so is unnecessary for recruitment and retention purposes;

(e) in determining competitive salaries, items such as premium pay, other additional pay, and the value of other benefits such as payment of insurance premiums—both in VA and non-VA facilities—would be taken into consideration;

(f) in no instance would the rate of an incumbent employee's pay be decreased as a result of lower salaries identified in the community through the survey process although the salary scale would be adjusted downward if such a salary trend occurs in the relevant labor-market area;

(g) pay increases resulting from the labor market area survey would become effective at the beginning of the first pay period on or after July 1, 1990—thereafter at the beginning of the first pay period starting on or after January 1 of each year;

(h) in addition to other parameters which may be set forth in regulations, a comparable health-care facility would be defined as one identified by the individual facility director to be in direct competition with VA for the same employees;

(i) if no comparable health-care facilities exist within a given labor market area, the salaries of the same type of employees employed in other health-care settings in the labor-market area for whom the VA is competing would be utilized;

(j) if the number of comparable facilities and the number of corresponding employees within the labor market area is insufficient to produce a valid comparison, a VA health-care facility (approved by the CMD for this purpose) in a similar demographic and labor-market area would be utilized as the comparison;

(k) in those facilities where RNs, CRNAs, or other affected employees are covered by a collective bargaining agreement, union consultation would be required in connection with (i) the development of national survey criteria, (ii) the development of local survey criteria, (iii) the development of the local plan for data collection, and (iv) the decisions regarding specific salary determinations;

(l) protection from disclosure of survey information would be provided pursuant to the Freedom of Information Act (section 552 of title 5);

(m) for any grade in the VA salary scale determined by the Secretary, upon the recommendation of the CMD, to be an entry-level grade, the entry salary could not be increased to a level in excess of step 10 of grade 13 of the General Schedule (for those grades which are not entry level, the entry salary could not exceed the statutory cap for the Executive Schedule);

(n) unless a promotion, demotion, or change of assignment is involved, either voluntary or otherwise, employees transferring from one VA facility to another would retain their grade and step but would receive the applicable wage associated with such grade and step as determined for the receiving facility; and

(o) require the Secretary, not later than March 1 of each year—beginning with 1991—to submit to the Congressional Committees on Veterans' Affairs a report containing a review of the implementation of this new authority and the effect of market rate adjustments on the ability of VA to recruit and retain health-care professionals pursuant to this legislation, and any other legislation recommended to assist in recruitment and retention efforts (section 251).

2. Authorize the VA to hire, without regard to the civil service examination and register processes, VA-trained health-care professionals (other than physicians, dentists, and nurses) during the first year after their graduation (section 252).

3. Authorize VA to use the Director grade for certain physicians and dentists assigned to Central Office if the position is comparable to the position of a medical center director (section 253).

4. Require VA to pay overtime to RNs, RNAs, and CNRAs at the rate of one and one-half times their hourly rates of basic pay (section 254).

5. Require the Secretary to provide a 6-percent pay differential to nurses appointed to head nurse positions, or assigned to such positions in excess of 30 days, and provide for this pay to be considered as basic pay for the purposes of determining other employment benefits (section 255).

6. Provide the Secretary with discretion to pay to health-care personnel employed under title 5 or the title 5/title 38 "hybrid" appointment authorities who furnish direct care or services incident to direct care additional pay on the same basis as registered nurses (section 256).

7. Increase the cap on special salary rates so as to permit the rates to exceed by two times the difference between the minimum

and maximum of the grade and require the Secretary to notify the Committees on Veterans' Affairs when a special salary rate becomes 94 (or more) percent of the maximum amount permitted (section 257).

8. Reduce from 90 to 45 days the period, after VA submission of a title 5 health-care employees' special-pay rate, in which the President or the President's designee may disapprove the proposed rate and clarify that the proposed rate may be put into effect earlier if approval is given in a shorter period (section 257).

9. Expand the Secretary's authority to make an exception—currently limited to physicians—to the title 5 provisions reducing the amount of retirement or retainer pay of a uniformed services retiree employed by the Federal Government so as to include other VHS&RA employees where necessary to meet special or emergency VA employment needs which result from a severe shortage of well-qualified candidates (section 258).

10. Require the Secretary to award each nurse, upon recertification in a speciality, an amount equal to one percent of the nurse's annual basic rate of pay if the nurse is employed in the clinical specialty in which he or she is certified and if the most recent performance evaluation of the nurse was not less than satisfactory (section 259).

11. Make the labor-management rights of Federal employees generally (under chapter 71 of title 5) applicable to the Secretary's authority under section 4108(a), to establish the hours and conditions of employment and leaves of absence of title 38 employees (except with respect to the prohibitions set out in paragraphs (1) through (6) of that section, which pertain to potential conflict-of-interest situations arising in the context of heatlh care) (section 260).

12. (1) Remove from the coverage of the provisions governing disciplinary actions against title 38 employees (section 4110 of title 38) certain lesser proposed penalties—specified as suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment; (2) provide that, in such cases, a title 38 employee would be entitled, in lieu of a section 4110 proceeding, to a process which would include (a) advance written notice setting forth the specific reasons for the proposed action, (b) a reasonable time to answer the notice, either in writing or orally, including time to furnish affidavits and other documentary evidence in support of the answer, (c) a chance to be represented by an attorney or some other representative, and (d) a written decision, including the reasons for the decision, at the earliest practicable time; (3) provide two methods by which title 38 employees could gain a review of a decision on such a specified lesser disciplinary matter or of a decision on a grievance: (a) for those title 38 employees who are not members of bargaining units, an agency review procedure established by the Secretary, and (b) for those employees who are members of such a unit, a negotiated grievance procedure which would include binding arbitration; and (4) provide that any agency review procedure established by the Secretary with respect to proposed disciplinary actions and grievance resolution regarding title 38 employees who are not covered by collective bargaining agreements would have to include (a) an informal review of the decision on the disciplinary action by a VA official of a higher level

than the official who made the original decision and a prompt decision following that review, (b) a right to have the matter reviewed further by an impartial examiner from within VA who would have to submit a prompt report of findings and recommendations, and (c) a prompt review of those findings and recommendations, as well as any comments the employee or the Department or both wishes to make on the findings and recommendations, by a Department official at a higher level than the one who carried out the first informal review (section 261).

13. Require the Secretary to conduct, for 5 years, a leave-transfer program for medical emergencies of VA employees appointed pursuant to section 4108 of title 38 and authorize the Secretary to establish and conduct a leave-bank program for medical emergencies of those same employees (section 262).

14. Authorize extending for a period not to exceed 2 years, the temporary full-time appointment of a nurse or a health-care professional appointed under the title 5/title 38 "hybrid" appointment authority, such as a licensed practical nurse, physicial therapist, occupational therapist, or pharmacist, who has completed a full course of academic training and is awaiting licensure or certification (section 263).

15. Authorize extending for a period not to exceed the length of an academic program, the temporary appointment of a student who is pursuing an academic degree in physical therapy, occupational therapy, pharmacy, or nursing (section 263).

16. Require (and authorize for other title 38 employees), effective September 1, 1990, that (1) cash awards analogous to those required by section 5406 of title 5 be paid to title 38 supervisors and managers (including head nurses) who receive the highest proficiency rating possible, as determined under criteria promulgated by the Secretary; (2) such awards range from 2–10 percent of the employee's base annual salary but allow the award to be increased to up to 20 percent if the employee's performance is unusually outstanding; (3) the aggregate amount paid for such awards be limited in a manner identical to that provided in section 5406(c)(1) of title 5, which establishes the maximum total amount of cash awards as not more than 1.5 percent multiplied by the aggregate amount of basic pay payable to the covered employees in the agency and the minimum amount as not less than 1.15 percent multiplied by the aggregate amount of basic pay payable to covered employees in the agency; and (4) the Secretary establish a cash award program identical to the program under section 5407 of title 5 (which provides for amounts up to $10,000 or, for outstanding performance, up to $25,000) for title 38 supervisors and managers in grades comparable to General Schedule grades 13–15 who, by their suggestion, invention, superior accomplishment, or other personal efforts, contribute significantly to the Federal government (section 264).

17. Authorize the Secretary to establish and operate a dependent care assistance program for the care of dependents of VHS&RA employees that meets the requirements of section 129 of Internal Revenue Code (section 265).

18. Require the Secretary to ensure an equitable allocation of VA health professional scholarships to persons enrolled in their second

year of a program leading to an associate degree in nursing (section 266).

19. (1) Authorize the appropriation of $5 million for each of FYs 1990 and 1991 and $6 million for each of FYs 1992 and 1993 for VA to reinstitute a program of VA funding for the expansion or improvement of programs in post-secondary schools to educate health-care professionals; (2) provide for such funds to remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated; (3) require that the development of new health careers, interdisciplinary approaches, and career-advancement opportunities with this VA assistance occur in collaboration with professionals carrying out the duties involved; and (4) authorize VA to expend up to 10 percent of each year's appropriation under this section on VA programs designed to develop or initiate improved methods of education and training for health-care personnel (section 267).

20. Require the Secretary to pay the maximum amount of special pay authorized for a VA physician or dentist without regard to the 1982 administratively-imposed offset unless the CMD determines, in the case of a particular individual or category, that it is unnecessary to do so in order to recruit or retain qualified physicians or dentists in a specific specialty or geographic area (section 268).

21. Require VA during calendar years 1990, 1991, and 1992 to conduct, and submit periodic reports on, a pilot program at not less than five VA medical facilities to determine the desirability of: (1) establishing programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, RNs, and other personnel furnishing direct patient care; (2) creating new alternatives for utilizing the skills and knowledge of RNs and other health-care professionals in furnishing direct-patient care or services incident to direct patient care; and (3) increasing the pay differential for evening and night service (section 269).

22. Require the Secretary to increase rates of pay for VA psychologists who have board certification by using the "hybrid" title 5/title 38 appointment authority unless the Chief Medical Director certifies, within 90 days after the date of enactment, that an increase of board-certified psychologists is clearly not necessary for VA to furnish the appropriate quality of psychological services to veterans (section 270).

TITLE III—EDUCATION AND EMPLOYMENT

This title, entitled the "Veterans Education and Employment Amendments of 1989", includes freestanding provisions and amendments to chapters 30, 31, 32, 34, 35, 36, and 41 of title 38 and chapter 106 of title 10 that would:

1. Provide, effective January 1, 1990, a 9.5-percent COLA in the subsistence allowance paid to service-connected-disabled veterans participating in programs of rehabilitation under chapter 31 of title 38 (section 301).

2. Provide, effective January 1, 1990, a 9.5-percent COLA in the educational assistance allowances paid to service-connected-disabled veterans' dependents and survivors pursuing training under chapter 35 of title 38 (section 302).

3. Modify the pilot program of vocational evaluations and training for new recipients of VA need-based non-service-connected-disability pension so as to (1) make participation in the program completely voluntary by eliminating the requirement that veterans under age 50 who are awarded pension during the program period participate in an evaluation to determine whether achievement of a vocational goal is reasonably feasible, and (2) add a trial-work-period component under which the pension of a participant who obtains a job for which he or she is trained would not be terminated either by reason of having the capacity to engage in employment or by reason of earned income until the veteran has maintained that employment for 12 consecutive months (section 303).

4. Make permanent the program of independent living services for service-disabled veterans under chapter 31 (section 304).

5. (1) As of May 1, 1990, require work-study payments to be based on the higher of the Federal minimum wage or the minimum wage of the particular State involved; (2) expand the work-study program to include individuals training under chapter 106 of title 10 (members of the Selected Reserve) and make activities related to the administration of chapter 106 at Department of Defense facilities a service which may be performed by chapter 106 participants under work study; and (3) make service-disabled veterans eligible for work-study benefits when pursuing training or attending school at a half-time or higher rate (a) under chapter 31 (vocational rehabilitation), or (b) if the veteran's service-connected disability is rated at 30 percent or more, under chapter 30 (Montgomery GI Bill (MGIB)), chapter 32 (Post-Vietnam Era Veterans' Educational Assistance Program—VEAP), or chapter 34 of title 38 (Vietnam-era GI Bill) (section 305).

6. As of May 1, 1990, expand eligibility for VA's work-study program to include service-connected-disabled veterans' dependents and survivors pursuing education programs under chapter 35 of title 38 (section 306).

7. Specify that "mitigating circumstances"—which excuse a veteran from repayment of part of the benefits received for a course from which the veteran withdrew—include difficulties beyond the control of the veteran in making or changing child-care arrangements (section 307).

8. (1) Extend the Veteran's Readjustment Appointment (VRA) authority termination date from December 31, 1989, to December 31, 1991, for Vietnam-era veterans who are service disabled or served in the Vietnam theater of operations; (2) expand eligibility during the extended period to include post-Vietnam-era veterans and all veterans with service-connected disabilities rated at 30 percent or more; (3) permit a veteran to receive a VRA only once after the date of enactment; and (4) limit the period during which an appointment may be made by requiring that the veteran receive an appoinment by the later of (a) the end of the 4-year period from the date of separation from active duty, or (b) the 2-year period beginning on the date of enactment (section 308).

9. Authorize the Secretary of Labor, during FYs 1990–92, to conduct a pilot program of providing employment and training information services with the participation of Disabled Veterans' Outreach Program Specialists and Local Veterans' Employment Repre-

sentatives to servicemembers within 6 months of their separation dates in not more than five nor less than ten geographically-dispersed States in which the Secretary determines that services to veterans would not be unduly limited as a result of the pilot program, with a report on the program due on February 1, 1992 (section 309).

10. Authorize the Secretary of Defense to broaden the secondary-school equivalency that is acceptable as a prerequisite for eligibility to participate in the MGIB by permitting the Secretary to determine what is an adequate equivalent (section 310).

11. Prohibit individuals from receiving entitlement credit under both chapter 32 (VEAP) and chapter 106 (MGIB-Selected Reserve) based on the same period of service (section 311).

12. Permit VA to accept a school's certification for renewal of an individual's educational benefits following termination for unsatisfactory conduct of progress (section 312).

13. Eliminate differences in attendance requirements ("absence reporting") which exist between "degree" and "non-degree" training (section 313).

14. As of October 1, 1989, provide that funding for the development of a national training curriculum for State approving agency (SAA) employees may come from the amounts made available to the SAAs by the Secretary (section 314).

15. Provide VA with discretionary authority to require monthly self-certification verifying pursuit of training under any VA education program (currently in operation under the MGIB only) for both degree and non-degree training and for all rates of training, including training on less than a half-time basis (section 315).

16. Include service-disabled chapter 31 (vocational rehabilitation) participants in the count of those for whom VA pays fees to schools to defray the costs incurred by the schools in making reports and certifications to VA of the enrollment of VA-assisted students (section 316).

17. simplify the formula for determining whether a student receiving VA-administered educational assistance is engaged in full-time study when pursuing a non-college-degree course at an institution of higher learning if the institution requires as part of the course one or more unit course or subjects creditable toward a college degree (section 317).

18. Modify the criteria for detemining the applicability of, and exceptions to, both the "two-year" and the "85-15" rules, which limit the types of courses for which GI Bill benefits may be paid, for certain courses provided under contract with the Defense Department so as to take into account individuals training under the MGIB Selected Reserve program (section 318).

19. As of August 1, 1990, (1) repeal the existing limit on changes of educational program which generally permits no more than two changes of program (except for changes necessitated by circumstances beyond the student's control); and (2) in the case of second and subsequent changes or program, permit VA approval only if (a) the veteran or person accepts educational or vocational counseling services referred to in section 1663 of this title; and (b) the Secretary determines, on the basis of the results of the educational or

vocational counseling, that the change is suited to the veteran's or person's aptitudes, interests, and abilities (section 319).

20. Provide that, if VA exercises the discretionary authority (proposed in section 316, discussed above) to require monthly self-certification, the effective date of an educational benefits adjustment based on a change of a student's course load or other change in aggregate training time would be the date of the change rather than the end of the month in which the change occurs (section 320).

21. Make various technical and clerical amendments to certain VA educational assistance programs (section 321).

TITLE IV—HOME LOAN

This title, which is entitled the "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989," contains amendments to chapter 37 of title 38 that would:

1. Establish a new revolving fund, the Home Loan Guaranty Fund (HLGF), to finance the loan guaranty program with respect to loans made after September 30, 1989 (section 401).

2. Require the Federal Government to contribute 0.25 percent of the loan amount to the HLGF for the fiscal year in which the loan is guaranteed and for each of the next two years, except in the case of loans guaranteed in FY 1990 for which the inititation of the contributions would be delayed by one year (section 401).

3. Require the Secretary of the Treasury to invest in Government securities the surplus amounts in the new fund (section 401).

4. Require VA to include in its annual budget submission to Congress certain information about the current and future operations and financial status of the Loan Guaranty Revolving Fund (LGRF)—which would continue to support all loan guaranties made prior to October 1, 1989—and the new HLGF (section 401).

5. Generally increase the current loan fee from 1 percent to 1.25 percent but decrease it to 0.75 percent for veterans making a downpayment of 5 percent or more (10 percent or more for manufactured-home loans) and to 0.25 percent for downpayments of 10 percent or more on other than manufactured-home loans (section 402).

6. Continue the current 1-percent fee for vendee loans (section 402).

7. Increase the current 0.5-percent fee to 0.75 percent for assumed loans (section 402).

8. Continue the current exemption of disabled veterans and their surviving spouses from payment of the loan fee and require the Government to pay the fee for those borrowers (with such payments deferred until FY 1991 in the case of loans closed in FY 1990) (section 402).

9. Authorize the Secretary, when necessary to maintain the solvency of the HLGF and upon providing advance notice to the Congressional Committees on Veterans' Affairs, to raise all the fees uniformly to no more than 20 percent above the statutory levels and, if later warrented, to decrease the fees to no lower than the statutory levels (section 402).

10. Provide that veterans and assumptors who have paid (or are exempt from paying) the increased fees generally are exempted from liability to VA ("indemnified") in the event of foreclosure on

a VA-guaranteed loan, except in cases of fraud, misrepresentation, or bad faith or, under regulations prescribed by the Secretary, when the default is for reasons within the veteran's or assumptor's control (section 403).

11. Extend for one year, to October 1, 1990, (1) the current expiring authority for VA to sell vendee loans either with or without recourse and (2) the requirement for VA to submit detailed reports on each such sale in a report to the Committees on Veterans' Affairs (section 404).

12. Require that all amounts received from recourse and nonrecourse loan sales be credited, without reduction, as offsetting collections of the LGRF or the HLGF, depending on which fund received the fee for the loan involved (section 404).

13. Allow a veteran to acquire additional loan guaranty entitlement—up to $5,000—by paying a 0.1-percent fee for each additional $1,000 of entitlement or portion thereof (section 405).

14. In cases where a veteran has acquired additional entitlement, provide that the total of the guaranty and any downpayment may not exceed 25 percent of the purchase price, unless the Secretary grants a waiver, under regulations prescribed by the Secretary, in order to enable a veteran to use a VA-guaranteed loan in a market where lenders otherwise would charge so many points (which sellers must pay) that it is unlikely that the veteran could use his or her VA entitlement to acquire a home (section 405).

15. Authorize the Secretary to require, pursuant to regulations, that holders of VA-guaranteed or direct loans who refuse a borrower's tender of a "significant" portion of the debt due provide VA with notice of the refusal and provide certain other information about the tender (section 406).

16. Extend by two years, through FY 1991, the statutory formula (known as the "no-bid" formula) by which VA determines whether it will acquire at foreclosure the property securing a VA-guaranteed loan (section 406).

17. Prohibit VA, in determining the net value of a property for purposes of the no-bid formula, from considering the cost of borrowing the funds necessary to acquire the property, except to the extent of one-half of the amount by which the cost of borrowing that amount exceeds the cost of borrowing the amount necessary to pay the guaranty (section 406).

18. Expand the purposes for which a veteran may obtain a VA-guaranteed refinancing loan for up to the full value of the property to include refinancing a construction loan, replacing an installment land sales contract with a traditional deed and mortgage loan, and refinancing a non-VA loan with a VA-guaranteed loan having a lower interest rate (section 407).

19. Limit the time during which a veteran may apply to VA for waiver of a home-loan debt to one year after the date VA notified the debtor of the indebtedness (section 408).

20. Require that VA debt notices both for home-loan debts and for non-home-loan debts inform the recipient of his or her right to apply for a waiver and how to apply (section 408).

21. Correct an error in existing law that inadvertently omitted servicemembers on active duty from the definition of "veteran" for home-loan purposes (section 409).

TITLE V—MEMORIAL AFFAIRS

This title includes freestanding provisions and amendments to chapters 23 and 24 of title 38 that would:

1. Permit payment of the VA headstone allowance to the estate of a deceased veteran who purchased a headstone prior to death (section 501).
2. Direct the Secretary of the Army to set aside for the unmarked interment of cremated remains an appropriate area in Arlington National Cemetery that is not suitable for the burial of casketed remains (section 502).
3. (1) Authorize the Secretary, in connection with the operation of the National Memorial Cemetery in Arizona, to employ without regard to Civil Service requirements persons who were employed by the State of Arizona in the administration of the cemetery when it was transferred to VA pursuant to section 346 of the Veterans' Benefits and Services Act of 1988; and (2) require the Secretary to submit an operating budget plan for each of FYs 1989, 1990, and 1991, and, to submit such plans each year to the Congressional Committees on Veterans' Affairs (section 503).

TITLE VI—MINORITY AFFAIRS

This title includes freestanding provisions and amendments to chapter 3 of title 38 and the Department of Veterans Affairs Act (Public Law 100-527) that would:

1. Require the Secretary to assign to an Assistant Secretary responsibility for assessing the effects of VA policies and activities on minority veterans, including women veterans, and for coordinating and monitoring policies facilitating the access of such minority veterans to VA benefits and services (section 601).
2. Would reestablish the Advisory Committee on Native American Veterans for an additional 2 years (section 602).
3. Would require VA (1) to conduct a study to determine whether Native-American, Native-Alaskan, and Pacific-Islander (including Native-Hawaiian) veterans living on trust or communally-owned lands experience difficulty in obtaining VA home loan benefits; (2) if VA finds that these veterans experience difficulties obtaining VA-guaranteed loans, to propose administrative, regulatory, or legislative changes to address the problem; and (3) to submit to the Congressional Committees on Veterans' Affairs a report on the study by March 1, 1990 (section 603).

TITLE VII—MISCELLANEOUS

Title VII contains free-standing provisions and amendments to chapter 61 of title 26, title 28 appendix, chapters 1, 3, 53, and 71 of title 38 which would:

1. (1) Specify that the Secretary may not delegate the functional and technical supervision of the performance of security and law enforcement functions within VA to any official outside the Office of the Secretary; (2) require the Secretary, within 120 days after enactment, to submit a report containing the Secretary's plan for improving the training, recruitment, retention, and pay of VA security personnel, as well as an assessment of (a) the need for establishing a policy on the issuance of weapons to security personnel as-

signed to medical centers located in high-crime areas and the use of weapons by such personnel, (b) the various options available to the Secretary for providing improved protection for security personnel assigned to medical centers in high-crime areas, and those not located in high-crime areas, and (c) the adequacy of the number and deployment of security and law enforcement personnel at each VA medical center (section 701).

2. Expand VA's multiyear procurement authority to include the purchase of non-health-care supplies and services (section 702).

3. Require VA, at each stage of its claims-adjudication proceedings, in a case in which it has not fully awarded the claim, to provide the claimant and the claimant's representative, if any, clearly-written notice of the rationale for the disallowance or partial award and a detailed description of the subsequent procedural alternatives through which the claim might be pursued (section 703).

4. Amend paragraph (7) of section 6103(1) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(1)(7)), relating to disclosures of certain third-party and self-employment tax information (from the Commissioner of Social Security or the Secretary of the Treasury) to Federal, State, and local agencies administering certain programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program for purposes of income verification, so as to require disclosure to the Department of Veterans Affairs (VA) of (1) all such information for purposes of determining eligibility for VA needs-based pension programs under chapter 15 of title 38 or any other law administered by VA, needs-based parents' dependency and indemnity compensation provided under section 415 of title 38, and VA health-care services based on income status under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of title 38, and (2) only wage and self-employment information from such returns for purposes of determining eligibility for compensation paid, pursuant to section 4.16 of title 38, Code of Federal Regulations, at the total-disability-rating level based on an individual determination of unemployability (section 704(a)).

5. Allow VA, in the case of compensation beneficiaries with total-disability ratings based on individual unemployability, to verify or otherwise act upon wage or self-employment data only if the Secretary finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability (section 704(a)).

6. Amend chapter 53 of title 38, relating to special provisions pertaining to VA benefit programs, to add a new section 3117 to prohibit the Secretary from using such tax information without first complying with the requirements of section 1137 of the Social Security Act (42 U.S.C. section 1320b-7) relating to independent verification of such data, notification to the individual concerned, and allowing the individaul fair opportunity to contest Department findings based on such information (section 704(b)).

7. Require, within 90 days after the date of enactment and before obtaining such return information, that VA notify benefit recipients and applicants that income reported to VA will be subject to verification against such return information and to so notify all

new applicants and periodically to renotify all recipients (section 704(c)).

8. Provide that (1) VA's costs of establishing and operating the program under which the return information would be obtained, used, and verified would be paid for out of VA's compensation and pension account, and (2) amounts collected as a result of the program would be paid into that account (section 704(d)).

9. Provide that the statute (section 4052(a) of title 38) giving the United States Court of Veterans Appeals exclusive jurisdiction over all matters decided by the Board of Veterans' Appeals (BVA) shall not apply as to BVA decisions involving VA insurance matters under sections 775 and 784 of title 38, or VA home loan guaranty matters under chapter 37 of title 38, when the notice of disagreement in the case is filed within 30 days after the effective date of the Committee bill (section 705(a)).

10. Amend the statute relating to financial disclosure by judicial personnel (section 301 et seq. of title 28 Appendix, United States Code) to add the United States Court of Veterans Appeals to the list of courts covered by that law (section 705 (b)).

DISCUSSION

TITLE I—COMPENSATION AND PENSION

Disability Compensation and Dependency and Indemnity Compensation Cost-of-Living Adjustments

Section 101 of the Committee bill, which is derived from section 101 of S. 13 as introduced, would require the Secretary of Veterans Affairs to increase, generally effective December 1, 1989, the rates and limitations for compensation paid to veterans with service-connected-disabilities and the rates of dependency and indemnity compensation (DIC) paid to certain service-connected-disabled veterans' survivors. The adjustment would be the same percentage—which currently CBO estimates to be 5.2 percent and OMB estimates to be 5 percent—as that which will be provided to Social Security recipients and VA pension beneficiaries and be effective on the same date as those increases. The increase in the award provided under section 314(k) would take effect August 1, 1990. Increases computed under this provision would be rounded down for those with 10- and 20-percent disability ratings and rounded to the nearest dollar for those with ratings of 30-percent and higher. These increased benefits would actually be paid beginning on January 1, 1990.

Background

The service-connected disability compensation program under chapter 11 of title 38, United States Code, provides monthly cash benefits to veterans who have disabilities that were incurred or aggravated during active service in our Nation's Armed Forces.

The amount paid depends upon the nature of the veteran's disability or combination of disabilities and the extent to which earning capacity is considered to be impaired. Compensable disabilities are rated according to the VA's Schedule for Rating Disabilities on a graduated schedule ranging from 10 to 100 percent, in 10-percent increments. Higher monthly rates are payable to totally disabled veterans with certain specific, very severe disabilities and combinations of disabilities (called "special monthly compensation").

As of June 1989, VA's disability compensation program was providing benefits for 2,191,664 veterans who have service-connected disabilities. This number includes 4,939 World War I veterans; 919,982 World War II veterans; 212,543 Korean-conflict veterans; and 640,127 Vietnam-era veterans. A veteran whose disability is rated at 30 percent or more may receive additional compensation for the veteran's spouse, children, and dependent parents. These dependents' allowances are pro-rated according to the percentage of disability. As of March 1989, 683,605 veterans received additional compensation for 1,043,296 dependents.

Under chapter 13 of title 38, DIC is paid to the survivors of servicemembers or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during active service. Survivors eligible for DIC include surviving spouses, unmarried children under the age of 18, certain helpless children age 18 or older, children between the ages of 18 and 23 who are enrolled in school, and certain needy parents. Under section 3112 of title 38, parents' DIC rates are automatically adjusted at the same time and by the same percentage as Social Security and VA pension benefits. Surviving spouses, children, and parents who are receiving death compensation by reason of deaths occurring before January 1, 1957, may instead elect to receive DIC.

DIC is paid to surviving spouses at rates determined by the pay grade (service rank) of the deceased veteran. A higher rate is payable if the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance, and additional amounts are payable for the veteran's surviving children. Children are entitled to DIC where there is no surviving spouse, or where a child age 18 or over became permanently incapable of self-support before reaching age 18, or where a child is age 18–23 and pursuing an approved course of education.

In FY 1988, DIC benefits were being paid to or for 825,701 surviving spouses, 117,938 children and 54,725 needy surviving parents.

Under section 410(b) of title 38, benefits are paid at DIC rates to the surviving spouse and children of veterans whose deaths are not determined to be service connected, where the veteran received compensation at the 100-percent rate over an extended period of time immediately prior to his or her death.

History of cost-of-living increases

The Committee periodically reviews the service-connected disability compensation and DIC programs with a view toward ensuring that the benefits provide reasonable and adequate compensation for disabled veterans and their families. Congress has acted periodically to provide cost-of-living adjustments (COLAs) in compensation and DIC benefits in order to ensure that those benefits keep pace with inflation. In fact, Congress has provided annual increases in these rates every fiscal year since 1976. The following table shows the percentage increases since 1970.

TABLE 1.—HISTORY OF SERVICE-CONNECTED DISABILITY COMPENSATION INCREASES, 1970 TO PRESENT

Year	Month	Increase (percent)	Cumulative (1969=100)
1970	July	10	$110.00
1972	August	10	121.00
1974	May	17.2	141.00
1975	August	11.8	158.55
1976	October	8.0	171.23
1977	October	6.6	182.53
1978	October	7.3	195.86
1979	October	9.9	215.25
1980	October	14.3	246.03
1981	October	11.2	273.58
1982	October	7.4	293.82
1983	April	3.5	304.11
1984	December	3.2	313.84
1985	December	3.1	323.57
1986	December	1.5	328.42
1987	December	4.2	342.21
1988	December	4.1	356.24

Committee bill

The Committee bill would direct VA to compute and provide increases in the monthly rates of compensation and DIC, generally effective December 1, 1989. The rates would be increased by the same percentage increase as the Social Security and VA pension cost-of-living adjustment that will take effect on that date. Paymemts to veterans rated 10- or 20-percent disabled would be rounded down, and payments to veterans rated 30-percent or more disabled would be rounded up or down to the nearest dollar.

The rate adjustment provided by the Committee bill would apply to the monthly rates of disability compensation under section 314 of title 38; to the rates of additional monthly compensation for dependents payable under section 315 to veterans rated 30-percent or more disabled; and to the annual clothing allowance under section 362 for disabled veterans who must use prosthetic or other orthopedic appliances, including wheelchairs, that tend to tear or wear out their clothing and, if section 102 of the Committee bill is enacted, for veterans with a service-connected skin condition requiring medication that stains or otherwise damages the veteran's clothing. The limitations in subsections (k) and (p) of section 314 on the maximum monthly amount payable to a veteran who would otherwise be entitled to a higher amount by reason of entitlement to two or more rates would also be increased.

The one exception to the December 1, 1989, effective date is that the adjustment in the award under section 314(k)(known as the "k" award) would take effect on August 1, 1990.

The COLA also would apply to the basic DIC rates for surviving spouses and children and to the additional allowances paid to surviving spouses who are in need of aid-and-attendance or are housebound, to helpless children age 18 or over, and to children ages 18 through 23 attending school.

The increases in DIC would automatically result in identical percentage increases in the benefits paid at DIC rates, under section 418 of title 38, to the surviving spouses and children of certain veterans who, at the time of death, had service-connected disabilities continuously rated totally disabling for at least either (1) 10 years, or (2) 5 years from the date of discharge. Also, by virtue of section 156(e)(1)(A) of Public Law 97-377, the DIC increases would automatically result in the same percentage increases, in benefits paid in lieu of the Social Security survivors' benefits that were terminated by section 2205 of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Public Law 97-35). Those Social Security benefits had been paid to certain survivors of those who died on active duty or from a service-connected disability—namely, to surviving spouses for children ages 16 and 17 and for children over age 19 who are secondary-school students. Additionally, pursuant to the amendment to section 156(a)(1) of Public Law 97-377 made by section 314 of Public Law 100-322, which restored to DIC beneficiaries receiving certain Social Security-equivalent benefits, the benefits which were eliminated by the OBRA of 1981, the DIC increase would be applied, effective December 1, 1989, to these restored benefits.

The COLA provision in the Committee bill generally received strong support from the witnesses who testified on title I of S. 13 at the Committee's June 9, 1989, hearing. However, although VA stated in its written testimony that "the Administration strongly supports COLAs for these most deserving beneficiaries", it also stated, "We believe that the Committee should instead * * * index these increases permanently to the Consumer Price Index." The Committee disagrees with the recommendation that a permanent statutory link be established between compensation/DIC COLAs and annual Social Security increases.

S. 13 as introduced did not specify that the COLA would be calculated so that increases for those with 10- and 20-percent ratings would be rounded down and 30-percent and higher ratings would be rounded up or down to the nearest dollar. The 10- and 20-percent rounding down saves $12 million in BA and $11 million in outlays in FY 1990 and is necessary in order to bring the total budget authority costs for this bill within the level available under the Committee's FY 1990 allocation under section 302(a) of the Congressional Budget Act.

The Concurrent Resolution on the Budget for Fiscal Year 1990 (H. Con. Res. 106) is based on the Congressional Budget Office's (CBO) assumption that the COLA would be 4.9 percent. CBO currently estimates that the December 1, 1989, Social Security COLA—and, hence, the COLA provided for by the Committee bill—will be 5.3 percent. In all probability, the actual Social Security COLA will be slightly different. Rather than selecting any particular percentage adjustment at the time the Committee ordered the bill reported, the Committee followed its practice in prior years of adopting the statutory link to the Social Security increase. The Committee believes this is the most equitable means of providing for increases in these important service-connected benefits.

Cost: According to CBO, the enactment of section 101 would entail estimated costs of $445 million in BA and $400 million in outlays in FY 1990 and total estimated costs of $2.56 billion in budget authority and $2.51 billion in outlays in FYs 1990–1994. (These estimates assume that the FY 1990 Social Security COLA will be 4.9 percent, which is the assumption underlying the FY 1989 Congressional Budget Resolution and is not changed for scorekeeping purposes under that resolution—despite any CBO revisions of its estimate.)

Expansion of Clothing Allowance

Section 102 of the Committee bill, which is derived from section 111 of S. 13 as introduced, would, effective October 1, 1989, expand the clothing allowance authorized under section 362 of title 38. The allowance currently is payable to a veteran who, because of service-connected disability, uses a prosthetic or orthopedic appliance (including a wheelchair) that tends to wear out or tear the veteran's clothing. Section 102 would extend this allowance to cases in which the Secretary determines that medication prescribed for a veteran's service-connected skin condition stains or otherwise damages the veteran's clothing.

The Committee reported a similar provision on August 1, 1988, in S. 2011 and the Senate passed that provision on October 18, 1988, in H.R. 4741, but it was dropped when the House refused to accept it.

Cost: According to a CBO estimate in 1988, the enactment of section 102 would entail no significant cost.

Extension of Period for Full Pension Payments to Hospitalized Veterans

Section 103(a) and (b) of the Committee bill would, effective January 1, 1990, (1) provide that monthly VA pension payments to veterans who are being furnished hospital care by VA and have no dependents may not be reduced until the veteran has been hospitalized for eight months, with the Secretary authorized to extend that period if VA's Chief Medical Director determines that the veteran is likely to be released from the hospital in a reasonable period of time, and (2) raise from $60 to $105 the limit on reduced pension payments for veterans being furnished institutional care.

Background

Needs-based VA pension is paid to wartime veterans who have permanent and total non-service-connected disabilities or are 65 years of age or older.

Section 3203(a)(1)(B) of title 38 limits the amount of needs-based VA pension that may be paid to veterans who have no dependents and are being furnished hospital or nursing home care by VA for extended periods. When the veteran has been institutionalized for three full calendar months following the month of admission, the veteran's pension generally may not exceed $60 per month. The rationale for this limitation is that, since the government is already providing for the veteran's basic needs by providing medical care, food, and shelter while the verteran is institutionalized, a continuation of the full needs-based-pension is not warranted after a certain point.

The Congress has also recognized, however, that hospitalized veterans in hospitals and nursing homes retain significant financial responsibilities. For veterans receiving care for periods longer than three months, the reduction in pension benefits can mean the difference between being able to return to an independent life and being overwhelmed by financial obligations that mount during the hospital stay. In most cases, the largest continuing expense is rent. By definition, veterans receiving needs-based VA pension benefits lack financial resources and are unlikely to have sufficient income or assets—aside from their pensions—from which to pay their rent. Without full pension payments, they are likely to be forced to give up their homes. Those veterans also would lack the resources to pay the security deposit and any advance rent required for a new apartment they would need upon release from the hospital or nursing home, or to meet other financial obligations which continued despite their institutionalization.

For these reasons, section 3203(a)(1)(D) provides for such a veteran's pension to be continued without reduction for up to three more months if the Secretary determines that the primary purpose of furnishing care is to provide a prescribed program of rehabilitation services designed to restore the veteran's ability to function within his or her family or community. Further extensions are provided if the Secretary determines that the continuation of the veteran's rehabilitation remains necessary and remains the primary purpose of the veteran's hospital or nursing home care.

It has come to the Committee's attention, however, that the term "rehabilitation" currently is not being interpreted as broadly as it could be. Thus, the pensions of some veteran's who are hopitalized for lengthy periods are being reduced despite the fact that they are receiving treatment service designed to make it possible for them to function in the community. For example, at the Committee's June 9, 1989, hearing, the Paralyzed Veterans of America testified that veterans with spinal-cord injuries who develop skin ulcerations requiring long periods of hospitalization, but who do not need training to enable them to function in the community, are not given extensions of the period for the payment of full pension.

Committee bill

Section 103(a) of the Committee bill would extend from three to eight months the period of hospitalization permitted before the veteran's pension benefits are reduced. In addition, the Secretary would be authorized to grant extensions for no more than two additional two-month periods, if the Chief Medical Director determines that the veteran is likely to be released in a reasonably short period of time.

The extension in section 103(a) would not apply to veterans residing in VA nursing homes, since there exists only a very small likelihood of release to the community for nursing home patients who are not receiving primarily rehabilitative services.

Also, under section 103(b), the amount to which benefits are limited for veterans receiving hospital, nursing-home, and domiciliary care from VA for periods beyond those prescribed in section 3203(a)(1) would be increased to compensate for the effects of inflation since the last increase in 1979. The 1979 limit of $60 is equivalent to $105 in 1989 dollars. The Committee bill thus would raise the current $60 limit to $105.

Cost: According to CBO, the enactment of section 103(a) and (b) would entail estimated costs of $4 million in budget authority and outlays in FY 1990 and total estimated costs of $27 million in budget authority and outlays in FYs 1990–1994.

Estate Limitations for Incompetent Institutionalized Veterans

Section 103(c) of the Committee bill would increase, effective January 1, 1990, from $1,500 to $6,000 the value of the estate allowed a hospitalized incompetent veteran without dependents before VA suspends the veteran's compensation or pension benefits. The Committee bill also would increase from $500 to $2,000 the amount to which an estate must be reduced before compensation or pension payments may be resumed. This provision is substantively similar to legislation reported by the Committee in section 504 of S. 1887 in 1986 (S. Rept. 99–200) and passed by the Senate on December 2, 1985.

Under section 3203(b)(1) of title 38, an incompetent veteran who has no spouse or dependent children and is hospitalized or otherwise institutionalized at government expense generally may not receive disability compensation or VA needs-based pension benefits if the veteran's estate equals or exceeds $1,500. Such benefits may not be reinstated until the veteran's estate is reduced to $500 or less. Other than this small estate, most incompetent veterans have few posessions of their own. However, on October 24, 1984, Congress enacted Public Law 98–543, section 402 of which generally excluded the value of an incompetent veteran's home from the computation of the veteran's estate for purposes of the $1,500 limitation. That law also authorized VA to waive the interruption of compensation or pension benefits, for up to 60 days in any calendar year, in cases of hardship. The Committee notes, however, that even under this very limited waiver authority VA benefits are still interrupted until a waiver is requested on behalf of the veteran and granted by VA.

A veteran discharged from hospital care in 1989 with only the minimum amount ($500) of estate value allowed before benefits are resumed has assets equal to much less than one-half of a month's disability payment at a 100-percent rating (currently $1,468). This is because the $1,500 and $500 limits have not been adjusted for inflation since they were first codified in 1946. The Committee is greatly concerned that inflation since 1946 has reduced dramatically the purchasing power of the funds available to an incompetent veteran subject to this provision.

The Committee believes that, compared to the inflation since this provision was first passed, the proposed estate limitation increase would be a small yet important change to ensure fair treatment of veterans who are unable to take care of themselves.

Mandatory Disclosure of Social Security Numbers

On June 1, 1989, Chairman Cranston, at the request of the Administration, introduced S. 1110, which would amend section 3001 of title 38 to authorize the Department of Veterans Affairs to require mandatory disclosure of claimants' and dependents' Social Security numbers (SSNs) in all claims for VA disability and death benefits.

Secretary Derwinski, in his May 22, 1989, letter transmitting the proposal (printed on page S6014 of the June 1 Congressional Record) noted that under section 7(a) of the Privacy Act of 1974 (Public Law 93-573), Federal State, and local government agencies generally are prohibited from denying any right, benefit, or privilege provided by law because of an individual's refusal to disclose his or her SSN unless Federal law requires disclosures.

However, he asserted the VA currently had limited authority to require disclosure of claimants' and their dependents' SSNs in cases of claims for VA pension, which are income-tested, and claims for compensation in which outside income is relevant—that is, where the veteran's service-connected disabilities do not qualify for a 100-percent rating under VA's disability rating schedule but VA grants a total-disability rating based on a determination that, in the individual veteran's particular case, the disabilities render him or her umemployable. The Secretary noted that disclosure is required in connection with "benefits affected by 'outside income' " so as to facilitate income verification order to "detect and eliminate fraud and abuse."

The statutory basis asserted for this limited authority was not cited in the Secretary's letter. However, the requirement itself is set forth in section 1.575(b) of title 38 of the Code of Federal Regulations.

In response to Committee inquiries, VA General Counsel's office provided a copy of an April 17, 1978, General Counsel's opinion concluding that VA had broad authority under section 7(a)(2)(B) of the Privacy Act to require the submission of SSNs by compensation and pension claimants. Section 7(a)(2)(B) allows requiring SSNs where "the disclosure of a Social Security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1978, * * * was required under statute or regulation adopted prior to such date to verify the identity of the individual." The General Counsel concluded that VA had implemented a qualifying requirement prior to 1975 and thus had the authority to continue to require SSNs in claims for pension or compensation benefits.

However, an August 6, 1986, Assistant General Counsel's opinion concluded that VA may not have the authority to amend 38 CFR 1.575(b) to include all claims for VA disability or death benefits and recommended the pursuit of legislation authorizing VA to require disclosure of SSNs by all compensation and pension claimants and recipients.

Secretary Derwinski's May 22 transmittal letter stated VA's justification for this legislation as follows:

> [B]enefits which may not be contingent upon income also require monitoring to protect against fraud and abuse. For example, disability compensation may not be paid concurrently with military retired pay or drill pay for reserve duty. Dependency and indemnity compensation may not be paid concurrently with Survivor Benefit Program pay-

> ments made by the Department of Defense. To control effectively against such unwarranted dual payments, cross checking to verify information establishing the right to benefits is required.

The Committee carefully considered the Administration's request but believes that VA has not provided adequate justification for this provision. VA currently has access to names, birth dates, and other identifiers that it uses for verification purposes and did not demonstate either the extent to which there are fraud and other abuses which the use of those identifiers has uncovered in the benefits areas in question or the magnitude of the number of cases in which the currently available identifiers do not suffice. Thus, the Committee lacks specific information as to the extent to which the proposed requirement for disclosure would likely be useful in detecting and discouraging fraud.

The Committee is concerned, however, that the Secretary implied in his letter transmitting the draft measure that there is a need for increased monitoring to "protect against fraud and abuse" in the cases of benefits as to which income is not an eligibility criterion. Therefore, the Committee directs the Secretary to report to the Committee (1) the nature and extent of any abuses VA has discovered through use of names and other identifying information of claimants, beneficiaries, and dependents in the cases of compensation and pension benefits as to which VA now lacks authority to require SSNs, and (2) in the case of each such benefit, the estimated number of cases in which VA believes SSNs are necessary to identify claimants, beneficiaries, and dependents in income verification processes, along with the estimated average monthly dollar amounts of the benefits involved.

TITLE II—HEALTH CARE

Part A—Mental Health

Care for Combat Theater Veterans With Service-Related Post-Traumatic Stress Disorder

Section 201 of the Committee bill, which is derived from section 201 of S. 13 and is similar to section 601 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would require VA (1) to provide treatment for PTSD on a priority-care basis once (a) a diagnosis of PTSD related to service in a combat theater has been made by a mental-health professional designated by the Chief Medical Director, and (b) the veteran's service in a combat area is verified (by the most rapid means possible), without the need for a pre-treatment adjudication on the issue of service-connection; and (2) to accomplish an evaluation of a veteran within 7 days after the referral of the veteran to a VA health-care facility from a Vet Center.

Background

It has long been the Committee's view that, inasmuch as service in combat is frequently associated with the development of PTSD, VA should be the leader in the diagnosis and treatment of this disorder. However, several sources of information, discussed below, available to the Committee indicate that the prevalence of PTSD among Vietnam veterans is alarmingly high and that veterans suffering from PTSD have been largely unsuccessful in gaining access to needed treatment.

The most illustrative evidence of the pervasiveness of PTSD among combat veterans is contained in the National Vietnam Veterans Readjustment Study, conducted by Research Triangle Institute (RTI) under a contract with VA pursuant to Public Law 98-160. The final report of this study was released on December 28, 1988. According to the RTI study, approximately 15.2 percent of male Vietnam theater veterans (479,000) and 8.5 percent of female theater veterans (610) are currently suffering from full-blown cases of PTSD. Another 11.1 percent of males and 7.8 percent of females, or a total of 350,000 theater veterans, suffer from trauma-related symptoms which, due to the lack of either intensity or breadth of symptoms are not characterized as "full-blown" PTSD cases.

The RTI study also examined the extent to which veterans with PTSD utilized mental-health serivces. RTI found that 61.7 percent of male Vietnam theater veterans with current cases of PTSD had made at least one visit to a mental-health-care provider at some point in their lives, and 20 percent of those with current PTSD had used VA mental-health services at some point. However, in the 12 months prior to the study, only 22.3 percent of those with PTSD had used some mental-health service and only 10.3 percent of those with PTSD had used VA mental-health services.

The RTI study is the most extenisve examination to date of the post-war readjustment problems of veterans. In conducting this study, RTI gave in-depth, face-to-face interviews to over 3,000 individuals, including approximately 1,600 veterans who served in the Vietnam theater, 750 veterans who served during the Vietnam era but not in Vietnam, and 650 individuals of similar demographic background who did not serve in the Armed Forces. In addition, a subset of over 300 Vietnam-theater veterans and 100 Vietnam-era veterans underwent followup clinical interviews with expert mental-health professionals.

During the Committee's July 14, 1988, hearing on PTSD, VA's Chief Medical Director, Dr. John Gronvall, was asked by Chairman Cranston if VA had any reason to believe that the findings made, or the methodology employed, by RTI in conducting the study were defective in any way. Dr. Gronvall replied:

> No, I have no reason to challenge the stated findings. We've had a very close working relationship with the study investigators, and we have had a team of technical experts involved in the study design and agreeing to the escalation of the budget of the study to ensure that the final output of the study was valid and could be used.
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> We clearly will give major attention to the study. And as I say, there is no reason that I am aware of—and I have asked that question very specifically—why we do not think that is a credible and valid finding. In fact, in talking with our staff about some kind of earlier "guesstimates" or

> judgments that they have made, they think this [the RTI study] is consistent with that.

RTI found that among certain racial/ethnic subgroups of Vietnam-theater veterans, prevalence rates for PTSD were higher than for white veterans—about 19 percent, or 68,000 cases, among black veterans, and "as high as 27 percent," or approximately 45,000 cases, among Hispanic veterans. Black veterans, Hispanic veterans, and women veterans were the only subgroups that were specifically oversampled by RTI. This aspect of the study is discussed and addressed in connection with section 203 of the Committee bill.

In addition to the RTI study, the Committee notes the publication of various research papers relating to findings of PTSD in older veterans and veterans of prior wars. One such paper, entitled "Group Treatment of Post-Traumatic Stress Disorder in Older Veterans", was presented at the Annual Convention of the American Psychological Association in Los Angeles in August 1985. This paper describes the authors' findings of "evidence of PTSD in veterans of World War II and Korea which has persisted for as much as 40 years." A case study in the September 1985 American Journal of Psychiatry entitled "Post-traumatic Stress Disorder: A Thirty-Year Delay in a World War II Veteran" describes in detail a WW II veteran's history with PTSD manifested after a delay of many years, following the veteran's forced early retirement. This case study generated two letters to the American Journal of Psychiatry, one in July 1986, and one in November 1986, in which other cases of PTSD in older veterans were discussed. An article in the October 1986 issue of Military Medicine entitled "Post-Traumatic Stress Disorder in the Older Veteran" discussed a group therapy program begun in 1981 at a VA medical center in Texas for older veterans with PTSD.

An article in the February 1987 issue of Hospital and Community Psychiatry entitled "Post-Traumatic Stress Disorder in World War II Naval Veterans" discussed the authors' findings of PTSD among a group of World War naval veterans who were attending a reunion of the crew of a U.S. destroyer that saw heavy combat in the Pacific during the war. An article in the September 1987 issue of the American Journal of Psychiatry, "Survivors of Imprisonment in the Pacific Theater During World War II" summarizes data obtained from 41 survivors imprisoned by the Japanese during World War II. The data suggested that 40 years later, half of the subjects met the full set of DSM-III criteria for PTSD. An article entitled "Traumatic Stress Disorder: Diagnostic and Clinical Issues in Former Prisoners of War" in the March/April 1989 issue of Comprehensive Psychiatry examines a variety of clinical issues in the diagnosis and treatment of PTSD in former prisoners of war. A July 1988 article in Military Medicine entitled "Case Report: Flashback as a Post-traumatic Stress Disorder (PTSD) Symptom in a World War II Veteran" alerts health care personnel to an often unrecognized diagnostic entity, namely PTSD in a combat veteran expressed after more than 40 years of apparently healthy functioning.

In the April 6, 1989, Committee oversight hearing on VA's health care funding, Chairman Cranston raised concerns about reports of referrals between VA medical centers and Vet Centers and asked VA to provide data on this phenomenon. In response to this question, VA conducted a survey of its Vet Centers for the month of May 1989, and the results were reported in a July 11, 1989, letter to Chairman Cranston. In that letter VA reported:

> The survey revealed that some veterans experience difficulties in gaining access to care. We believe these difficulties relate primarily to the limitation of resources available to Veterans Health Services and Research Administration (VHS&RA) this year. For example, the survey indicated that a significant number of medical facilites were referring veterans for whom they were unable to provide care but who were not Vietnam veterans with readjustment difficulties and so were not eligible for care at Vet Centers. Similarly, some veterans referred to medical care facilities for evaluation or treatment were not seen because of Category B and C limitations, staff at the referral site having a full load, lack of available, trained staff, and other resource constraints in effect at the time of the survey.

Vet Centers were surveyed in regard to the three types of referrals—medical center referrals to Vet Centers, Vet Center referrals to medical centers for evaluations, and Vet Center referrals to medical centers for treatment. The results of this survey confirmed reports that had been received by the Committee which indicated that veterans who need to be referred to VA medical centers from Vet Centers for evaluation and treatment of their PTSD are very often not getting any timely evaluation or treatment. Specifically, the survey found that 1,270 veterans were referred to Vet Centers from VA medical facilities. Of these 1,270 veterans, 634 were Vietnam veterans with readjustment problems and thus were appropriate referrals. Of the remainder, 390 were Vietnam veterans without readjustment problems, and 246 were veterans from other than the Vietnam era. Among the 246 veterans (or 19 percent of the total referred) from other than the Vietnam era, an uncounted number were veterans from WWII and the Korean conflict who were suffering from PTSD. This phenomenon is discussed in connection with section 205 of the Committee bill.

The survey found that 729 veterans were assessed by Vet Centers as needing evaluations at VA medical facilities. Of these, 26 percent (188) were not referred due to the non-availability of the evaluations, and another 7 percent (50) of these veterans were referred and waited over four weeks and may or may not have been evaluated.

In addition, 842 veterans were assessed by Vet Center staff as needing treatment for PTSD at VA medical facilities. Of these, 35 percent (297) were not referred because the veterans could not gain access to such care because of B or C categorization or because of unavailability of resources at medical facilities or the veterans' unwillingness to go to a VA medical facility for treatment. An additional 10 percent (77) of these veterans were referred but could not gain access to care within four weeks.

The findings of this Vet Center survey taken in conjunction with the RTI data indicate serious inadequacies in VA's response to the tremendous mental-health needs of veterans suffering from PTSD. As noted, according to the RTI data, of the approximately 479,000 Vietnam veterans currently suffering from PTSD, approximately 37 percent (177,230) have never been seen by a mental-health professional, and it is unclear how many of the other 63 percent (301,770) have undergone a full course of treatment. Referrals from medical centers to Vet Centers of veterans who are not eligible for Vet Center services are currently unauthorized and erode the structure of the VA health-care system in which medical centers and Vet Centers have statutorily-established roles. The VA transmittal letter which accompanied the results of the Vet Center survey concluded that referrals from medical facilities to Vet Centers "tend to crowd out Vietnam veterans with PTSD at vet centers—the only place in the VA system where non-service connected PTSD Vietnam veterans have a high priority for care." The Committee believes VA must make a careful assessment of these referrals from medical facilities to Vet Centers and determine their appropriateness and reevaluate whether to recommend or support legislation to sanction referrals of other than Vietnam-era veterans from medical facilities to Vet Centers for counseling, as discussed under section 202, below.

The resources VA presently devotes to treatment of PTSD are as follows. Currently, VA has only 16 specialized inpatient PTSD units (SIPUs) with 4 new such units to be added in FY 1990. These programs are located at the VA Medical Centers in Augusta, Georgia; Bay Pines, Florida; Buffalo, New York; Coatesville, Pennsylvania; Little Rock, Arkansas; Lyons, New Jersey; Montrose, New York; Northampton, Massachusetts; North Chicago, Illinois; Palo Alto (Menlo Park Division), California; Phoenix, Arizona; Tacoma, Washington; Togus, Maine; Tomah, Wisconsin; Topeka, Kansas; and Waco, Texas. All of these units have long waiting lists for admission to the treatment program, ranging from several weeks to over a year. Furthermore, most of these units have waiting lists for admission, even for screening programs in which veterans are admitted for a few days, assessed, discharged, and, if deemed appropriate, then put on a waiting list for admission for treatment. These screening waiting lists range from a week at the Coatesville VAMC to 32 weeks at the American Lake VAMC. For a veteran with PTSD in the American Lakes region, this situation translates into a wait of almost 2 years for treatment for this tremendously disruptive mental disorder.

In fiscal year 1988, 2,250 veterans were admitted to SIPUs for treatment, and the rate of program completion was 77 percent.

In addition to the SIPUs, there are 23 PTSD Clinical Teams (PCTs) that have been designated by VA to specialize in PTSD treatment at 23 of its 172 medical centers. These PCTs will be taking the place of the former PTSD Treatment Teams which previously were at 15 medical centers. The Special Committee on PTSD reported in its 4th annual report that several teams had been "cannabilized" by the local VAMCs and existed only on paper, while certain others were simply ineffective at their mission. Using portions of the additional $5 million Congressional add-on initiated by the Senate in Public Law 100-404 for PTSD treatment for fiscal year 1989 and as carried forward in VA's fiscal year 1990 budget request, VA decided to create 8 new treatment teams. To address concerns about the effectiveness of those teams already in the field, VA rescinded their designation and required all interested VAMCs to submit proposals. Of the 15 original sites which housed PTSD Treatment Teams, 9 will continue to have central office funding for PCTs. The PCTs will be located at VA Medical Centers in Boston, Massachusetts; Canandaigua, New York; San Juan, Puerto Rico; Philadelphia, Pennsylvania; Baltimore, Maryland; Mountain Home, Tennessee; Charleston, South Carolina; Gainsville, Florida; Jackson, Mississippi; Chicago, Illinois; Hines, Illinois; Battle Creek, Michigan; Minneapolis, Minnesota; Denver, Colorado; Kansas City, Missouri; San Francisco, California; Boise, Idaho; Los Angeles, California (outpatient clinic); Dallas, Texas; Albuquerque, New Mexico; New Orleans, Louisiana; and San Antonio, Texas.

VA also indicated that it will use a portion of the $5 million to create four PTSD Substance Use Disorder (PSU) programs, which will provide treatment for veterans with PTSD who are also abusers of alcohol and/or drugs. Such alcohol and drug abuse is common among those afflicted with PTSD. The PSUs will be located at VA Medical Centers in Little Rock, Arkansas; Milwaukee, Wisconsin; Lyons, New Jersey; and Palo Alto (Menlo Park Division), California.

The Committee believes that these treatment efforts are laudable but totally inadequate in the face of the enormous unmet needs of veterans with combat-related PTSD. The Committee also notes that the designation of the new SIPUs, PCTs, and PSUs occurred only after Congress took the initiative in adding the $5 million. It is also the opinion of the Committee that VA generally has been slow and unresponsive in carrying out its responsibilities to treat PTSD in the veteran population.

The waiting lists at the SIPUs represent a major indictment of the system's ability to meet its top-priority responsibility—the provision of high quality care in a timely way to veterans suffering from service-related disabilities.

Committee bill

In order to address the problem of veterans with PTSD being unable to get needed care on a timely basis, the Committee bill would require VA (1) to provide treatment for PTSD for a Vietnam-era veteran or a veteran of another period of war or of hostilities (as determined by the Secretary) on a priority-care basis once (a) a diagnosis of PTSD related to service in a combat theater has been made by a mental-health professional designated by the Chief Medical Director, and (b) the veteran's service in a combat area is verified (with verfication by the Veterans Benefits Administration (VBA) by the most rapid means possible), without the need for a pretreatment adjudication on the issue of service-connection; and (2) to accomplish an evaluation of a veteran within 7 days after the referral of the veteran to a VAMC from a Vet Center. The combat-area-status and evaluation provisions have been added to the provision as introduced in response to hearing testimony and VA's recent survey data.

The thrust of this provision would be that, if an appropriate VA diagnostician concludes that a veteran of combat or hostilities has PTSD, that is related to such service, care would be forthcoming on a priority basis without the veteran having to wait for a formal adjudication of service-connection as long as the Veterans Benefits Administration (VBA) or some other designated person verified that the veteran served in a war theater. This verification would have to take place as quickly as possible. This provision was added to address concerns raised by service organizations that combat-area service should be verified by someone other than the diagnostician who diagnoses combat-area-service related PTSD. It is the Committee's understanding that such verification of combat-area service can be done easily by checking a veteran's Form DD 214, Report of Release or Discharge from Active Duty, or a veteran's Official Military Personnel File if the discharge record is unavailable or incomplete.

The Committee recognizes that this provision would entail some reallocation of VA resources, but believes that any such change in focus so as better to serve the needs of veterans with PTSD is fully in accordance with the historic priorities of the VA to address those needs of veterans which are associated with their military service, most especially VA's mission of treating physical or mental health problems that are related directly to service.

The Committee intends this provision to enable veterans suffering from PTSD to receive VA health care on a priority basis without the need for their PTSD to be formally adjudicated as service connected. Section 201 would remove the encouragement for a veteran to seek compensation for the disorder to receive necessary treament for it. Veterans suffering from PTSD should not be made to await the outcome of the VA claims adjudication process before being able to receive treatment. Indeed, Vet Center team leaders who testified at the Committee's July 14, 1988, hearing stated that a veteran's participation in the claims process "completely stops the therapeutic process". Additionally, they testified that the process is a "very slow process", which can take four to six months to complete. VA's VBA currently reports that the processing of an unsuccessful claim at the Regional Office level—from the date of filing a claim to the Regional Office's certification of the claim to go before the Board of Veterans' Appeals (BVA)—takes approximately 300 days. According to the BVA, the processing of a claim at the BVA takes on the average an additional 167 days. Accordingly, many Vet Center counselors are hesitant to suggest that a veteran undergo the adjudication process unless the veteran is in deep financial distress. Similarly, at the June 14, 1989, hearing, representatives of both the National Associations of VA Chiefs of Psychiatry and Psychology testified that veterans with PTSD are generally ill-equipped to cope with the VA adjudication process and that, from a clinical standpoint, the adjudication process can often be extremely stressful to them.

Although the Committee recognizes that some veterans in financial distress will still need to undergo the adjudication process in order to obtain compensation, the Committee's purpose in recommending this provision is to obviate the need for adjudication of service-connection before treatment is provided.

The provision which requires VA to conduct evaluations of veterans referred by Vet Centers to medical facilities within 7 days of the date of the referral was added in response to the situation, discussed above, of veterans being referred to medical centers from Vet Centers and not being able to gain access to either evaluations or needed treatment or Vet Centers failing to make the referral because they were certain, based on experience, that the veteran would not receive an evaluation or treatment at the medical center.

Response to opposition to this provision

In response to concerns that were raised by VA at the June 14, 1989, hearing that the provision in the Committee bill would initiate a new trend in which VA treatment priorities would be determined by the diagnosis of a particular disease, the Committee notes that such priorities already exist in law. For example, veterans who develop an active psychosis within two years after their discharge or release from active service are presumed, under section 602 of title 38, to be service connected and are eligible to receive treatment on this basis. Other presumptions of service-connection for health-care purposes exist for veterans exposed to radiation or herbicides who later develop diseases that cannot be attributed to other causes.

Another concern raised at the July 27, 1989, Committee meeting, was that verification of a veteran's combat-area service could not be easily done. It is the understanding of the Committee that a veteran's service in Vietnam is noted on his or her Form DD 214, Report of Release or Discharge from Active Duty, and that most veterans retain such records in their possession. In the situation where a veteran does not have a Form DD 214 or the Form DD 214 does not show service in Vietnam, VA's computer database may indicate whether the veteran served there. Retrieval of information by this method may be done quickly at any of the Regional Offices, all of which have access to the appropriate database. In the situation where a veteran does not have a Form DD 214 and the veteran's name cannot be found in the VA's database or the database does not indicate whether or not the veteran served in Vietnam, a request must be made to National Personnel Records Center in St. Louis, Missouri, for the veteran's Official Military Personnel File. This file would verify whether the veteran had served in Vietnam. This last method of verification would likely require from 30 to 60 days to complete. The Committee believes that merely verifying a veteran's service in the Vietnam theater is not a difficult or burdensome procedure and that VA possesses the resources and ability to perform such verification rapidly.

Cost: CBO estimates that enactment of section 201 would entail estimated costs of $26 million in budget authority and $22 million in outlays in FY 1990, and a total of $150 million in budget authority and $146 million in outlays for FYs 1990–1994.

Eligibility for Services at Vet Centers

Section 202 of the Committee bill, which is similar to section 605 of S. 2011 as reported by the Committee on August 1, 1988, and passed by the Senate on October 18, 1989, in H.R. 4741, would authorize the Secretary to expand eligibility for readjustment counseling to include veterans of service in theaters of operations during any periods of war prior to Vietnam and veterans of service in areas in which United States personnel were subjected to danger from armed conflict comparable to that occurring in battle with an enemy during a period of war.

Under current law, section 612A(a) of title 38, entitlement for readjustment counseling services is limited to Vietnam-era veterans. In recent years, the Committee has considered various proposals to expand access to such services, including for those veterans who have served since the end of the Vietnam era in combat or combat-like situations and for veterans of earlier wars.

With regard to veterans who have served in our Armed Forces since the Vietnam era, the Committee recognizes that military personnel are at times exposed to combat situations short of declared war—such as existed in Beirut or Grenada, in connection with our actions against Libya, or in connection with Navy efforts in the Persian Gulf. These situations might produce the need among those involved in them for readjustment counseling to help deal with the psychological aftermath of their combat-related experiences and is particularly important in light of the current understanding, as noted in VA's testimony at the Committee's July 14, 1988, oversight hearing on issues related to post-traumatic stress disorder (PTSD), that early intervention can ameliorate the severity and persistence of PTSD symptoms in an individual following exposure to a traumatic event.

The Committee notes the testimony of Dr. Arthur Blank, Director of the VA's Readjustment Counseling Service, during the Committee's June 16, 1988, hearing. Dr. Blank indicated that Vet Centers nationwise are presently seeing as new clients approximately 375 World War II and 400 Korean-Conflict veterans per month.

Finally, with reference to this provision, the Committee notes that during his confirmation hearing on March 16, VA Deputy Secretary Anthony J. Principi indicated that he would favor making readjustment counseling available to veterans other than those of the Vietnam era and also to veterans of armed hostilities such as Lebanon or Grenada.

On this point, the Committee also notes the VA survey of its Vet Centers for the month of May, 1989, which was conducted in response to a question raised by Chairman Cranston at the April 6, 1989, Committee hearing. This survey, discussed previously with regard to section 201 of the Committee bill, confirmed anecdotal reports that Vet Centers have been counseling for PTSD veterans who are other than of the Vietnam era.

It is not the intent of the Committee that this provision would increase the number of Vet Centers or justify an increase in appropriations for their operation. Rather, the Committee intends to authorize VA to treat other-than-Vietnam-era veterans who served in combat theaters or combat situations—activities currently ongoing in Vet Centers without specific authority. The Committee's intent is that evaluations and counseling for veterans who may be given eligibility under this provision would be provided to the extent that existing Vet Center resources and facilities are available.

Cost: CBO estimates that enactment of section 202 would entail no significant costs.

Community-Based Residential Care for Homeless and Certain Other Chronically Mentally Ill Veterans

Section 203 of the Committee bill, which is derived from S. 405 and section 3 of S. 846, would amend chapter 17 of title 38 to add a new section 620C—entitled "Community-based residential care for homeless and other chronically mentally ill veterans"—under which VA would continue to carry out a program to assist chronically mentally ill veterans (currently carried out under section 115 of Public Law 100-322). This section would also remove the pilot designation of this program, extend the program for three years, and expand eligibility to include chronically mentally ill veterans with service-connected disabilities rated at 50 percent or more.

Background

The National Coalition for the Homeless estimates that as many as 3 million individuals are currently homeless, and that the numbers continue to grow. The U.S. Conference of Mayors reported in 1988 that there had been an overall increase in requests for shelter of 13 percent over the 1987 figure and that requests for shelter by homeless families with children had increased by 18 percent over the previous year. These numbers reflect a most urgent problem.

Of those who are homeless, approximately 33 percent have been described as being chronically mentally ill. The reasons for this high representation of mentally ill individuals among the homeless were described by Dr. Spencer Falcon, immediate past President of the National Association of VA Chiefs of Psychiatry, Chief of Psychiatry at the Ann Arbor VAMC, and a member of VA's Special Committee on PTSD, as follows:

> [I]n 1955, there were 559,000 patients in state hospitals; today, at any given time, there are approximately 123,000. Conceptually, deinstitutionalization was not flawed; its implementation was. The importance of psychoactive medication and a stable source of financial support was perceived, but the importance of developing such fundamental resources as supportive living arrangements was not clearly seen nor implemented. Nor was it forseen how reluctant many states would be to allocate funds for community-based services.

Veterans make up approximately 29 percent of the adult male population of the United States, and it seems clear that no less a percentage of veterans exist in the homeless population. Various surveys put the percentage of veterans in the homeless population between 18 percent and 51 percent. Using these estimates, between 135,000 and 382,500 veterans, many of whom are chronically mentally ill, are currently homeless.

VA's homeless chronically mentally ill (HCMI) program was first authorized in 1987 under section 2 of Public Law 100-6 as a contract authority. In 1988, under section 115 of Public Law 100-322, the Veterans' Benefits and Services Act of 1988, the contract authority was replaced by a requirement for VA to conduct in fiscal years 1988 and 1989 a pilot program for HCMI veterans. VA was authorized, as part of this program, to include in the program veterans with service-connected chronic mental illness disabilities and chronically mentally ill VA hospital and nursing home patients. Through this HCMI program, in combination with a special homeless veteran domiciliary bed program, VA has provided shelter and medical and psychiatric treatment for over 11,000 homeless veterans who are in desperate need of such help.

The VA HCMI program is a community-based program that combines aggressive outreach with health-care services, intensive case management, and time-limited care in non-VA residential treatment centers. The results from the program have been encouraging. The second annual report detailing the progress of the HCMI program was submitted to the Committee on January 17, 1989. In that report, VA indicated that, in the first eleven months of the program, operations in 43 VA Medical Centers in 26 States and the District of Columbia were able to assess 10,524 veterans and place 2,124 of them in residential treatment facilities. Given the difficult nature of contacting these veterans—in soup kitchens and shelters, on the streets, and under bridges—and of building trust between the veteran and the outreach worker, which is so very necessary to make an assessment and provide for physical and mental examinations, the numbers involved demonstrate a genuine success on the part of the outreach workers, and consequently on the part of the program itself.

The Committee notes that the program assessments show that the program is reaching those it was intended to reach, long-term homeless, extremely poor, chronically mentally ill veterans. VA's January 1989 report indicates that over 30 percent of those assessed had been homeless for one or more years; that average total income for the 30 days prior to assessment was $228; and that 38.1 percent reported having been hospitalized in the past for a general psychiatric problem, 51.6 percent manifested one or more severe psychiatric symptoms, and 97.3 percent of the 47 percent who were given psychiatric examinations from the HCMI program received at least one psychiatric or substance-abuse diagnosis.

Preliminary data about the outcome of treatment in community-based residential treatment is available for 1,356 episodes of treatment and for 638 veterans involved in the follow-up evaluation. Of those discharged from residential treatment programs, 25.6 percent were judged to have successfully completed the program, 32.7 percent left against medical advice, and 20.5 percent were discharged for violation of program regulations—often for using drugs or drinking. In 10.6 percent of the cases, the veteran left to obtain more intensive medical or psychiatric treatment elsewhere. These data are not particularly encouraging. The Committee, however, will continue to watch this program very carefully regarding its successful completion rate.

Not surprisingly, given that the need for ongoing care is the rule rather than the exception in the care of chronically mentally ill persons, the clinicians determined that, at the time of discharge, about half of the veterans had shown improvement but were in need of additional treatment, while only 1 to 8 percent of patients throughout the program had improved to the point of needing no further treatment.

At the Committee's June 14 hearing, VA and all witnesses strongly supported an extension of the HCMI program. Dr. Spencer Falcon, testifying as the representative of the American Psychiatric Association and the National Association of VA Chiefs of Psychiatry, charactyerized homelessness and the HCMI program as follows:

> When you look at the homeless mentally ill, realize that you are dealing with two problems with multiple causes and subgroups: homelessness and chronic mental illness. Each, in and of itself, is a formidable challenge to resolve, but combined, they present a problem of unprecedented magnitude and complexity. The population bears the cross of a dual disenfranchisement from society and its agents of service delivery: the mentally ill are often excluded from programs designed to serve the homeless, and those who are homeless are typically screened out from receiving services designed for the chronically mentally ill. The homeless mentally ill have become our society's "untouchables," unable to advocate for themselves, unable to protect themselves from harm, unable to acquire the bare necessities of living.
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> * * * * *
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> The VA's HCMI comprehensive community-based effort, composed of six stages (outreach, intake, psychiatric and medical examinations, initiation of treatment, residential care through contracts with non-VA community providers and intensive case management) is unique, and should serve as a model to policy makers across the country as they deal with this overwhelming crisis.
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> * * * * *
>
> The extension of this program for veterans who have service-connected chronic mental illness disabilities and chronically mentally ill veterans who are receiving VA hospital or nursing home care, is essential if we are to address the needs of the homeless.

Committee bill

The Committee bill would place the program in a new section 620C of title 38 and, in doing so, would remove the pilot program designation. The Committee believes that removing the pilot program designation would provide recognition of the success achieved by the program and the on-going need of these veterans. Additionally, in practical terms, it would allow VA to offer term or career positions, complete with employee fringe benefits, to those individuals working in the program. The Committee understands that there is a high burnout rate for outreach workers and others working with homeless veterans and that it is difficult to find replacements, due in part to the lack of job security and lack of benefits. The Committee also believes that the combination of the recognition of a job well-done and the opportunity for employment with health-insurance and other benefits would have a positive effect on the recruitment and retention of the professionals and other personnel involved in this program.

The substantive provision of new section 620C would be identical to those contained in section 115 of Public Law 100-322, the Veterans' Benefits and Services Act of 1938, with the exception that chronically mentally ill veterans with service-connected disabilities rated as 50 percent or more, who were eligible for care under the original authorization for this program, contained in section 2 of Public Law 100-6, enacted in 1987, would again be made eligible for care. Authorization for this program would extend through September 30, 1992. In addition, not later than February 1, 1992, the Secretary would be required to submit a report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on the experience of the Department under this section and the recommendation (together with the reasons for such recommendation) as to whether this program should be continued.

In section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, $15 million was authorized to be appropriated (in addition to any funds appropriated pursuant to any other authorization) for each of fiscal years 1989 and 1990 for the furnishing of care and services to homeless veterans under the current program authority in section 115 of Public Law 100-322. The Committee bill would replace the reference in section 801 of the 1988 McKinney law with a reference to the proposed new section 620C of title 38. It is the committee's expectation that any future extension of the McKinney authorities would include appropriate authorizations of appropriations for the furnishing of services to homeless veterans under this new section.

Cost: CBO estimates that enactment of section 203 would entail estimated costs of $14 million in budget authority and $12 million in outlays in FY 1990, and a total of $45 million in budget authority and $43 million in outlays in FYs 1990-1994.

Mental Illness Research, Education, and Clinical Centers

Section 204 of the Committee bill, which is identical to S. 86 which in turn, is substantively identical to section 604 of S. 2011 as reported by the Committee last year and passed by the Senate on October 18, 1988, in H.R. 4741, would (1) require the Secretary to designate not more than five of its health-care facilities as the locations for centers of mental illness research, education, and clinical activities (MIRECCs), at least one to be designated by July 1, 1990; (2) provide that, to qualify for designation, a facility must maintain arrangements with an accredited medical school, graduate school of psychology, nursing, social work, or other allied-health personnel school, under which residents and students, or both, would regularly rotate through the VA facility; and (3) authorize the appropriation of $3.125 million in fiscal year 1990 and $6.25 million for each of the next three fiscal years for these centers.

Background

The October 20, 1985, Report of the Special Purpose Committee to Evaluate the Mental Health and Behavioral Sciences Research Program of the VA, which was chaired by Dr. Seymour Kety (and hereinafter referred to as the "Kety Committee") concluded that research on mental illness and training for psychiatrists and other mental health specialists at VA facilities were totally inadequate. The report noted that about 40 percent of all VA beds are occupied by veterans who suffer from mental disorders, whereas less than 10 percent of VA's research resources are directed toward mental illness.

In order to improve and expand the capability of VA health-care facilities to respond to the needs of veterans with mental illness disabilities, the Kety Committee recommended that VA centers of excellence be established to develop first-rate psychiatric research programs within VA. Such centers would provide state-of-the-art treatment, increase innovative basic and clinical research opportunities and enhance and encourage continuing education and training in the treatment of mental illness.

Based on the recommendations of the Kety Committee, this Committee began efforts two years ago to encourage more research into mental illnesses and to establish centers of excellence. First, legislation enacted on May 20, 1988, Public Law 100–322, includes a provision—derived from section 316 of S. 9 as reported by the Committee on November 6, 1987—to add an express reference to mental illness research in the description of VA's medical research mission set forth in section 4101(c)(1) of title 38. This reference in the law is intended to help counteract the historical trend of underfunding mental illness research.

Second, the Committee report accompanying that legislation (S. Rept. No. 100–215, page 138), urged VA to establish three centers of excellence, or MIRECCs, as proposed by the Kety Committee. VA has not yet taken any action to do so.

Testimony received at this Committee's June 14 hearing was very supportive of S. 86. For example, the witnesses representing both the National Associations of VA Chiefs of Psychiatry and Psychology stressed that the establishment of MIRECCs would improve VA's ability to attract top-notch psychiatrists and psychologists and thus enhance the Department's ability to provide high quality mental health services to veterans.

Dr. Spencer Falcon, who is the immediate past president of the National Association of VA Chiefs of Psychiatry, the Chief of Psychiatry at the Ann Arbor VAMC, and a member of the Special Committee on PTSD (discussed above), testified:

> The inability to recruit and retain psychiatrists in the VA has reached a critical stage * * *. An increased attention to psychiatry research is essential to stem the tide of psychiatric research vacancies within the VA. The problems associated with recruitment and retention would be significantly diminished if a special effort was made to improve the professional milieu in which these physicians work. Establishment of MIRECC's would have a positive impact well beyond the institutions designated to have

> centers. The reputation of psychiatry within the VA and the commitment of the VA to mental health and subtance abuse issues would be highlighted by the establishment of such centers.

In support of his testimony, Dr. Falcon cited the results of a recent survey which found that nearly 15 percent of the 1860.63 psychiatric full time employment equivalents in VA were vacant. This figure includes 29 full-time Chief of Psychiatry vacancies, 18 full-time staff vacancies, and 50 part-time staff vacancies.

Committee bill

Under the Committee bill, VA would be required to establish MIRECCs at not more than five VA facilities which are geographically dispersed and meet certain criteria. At least one MIRECC would be required to be designated by July 1, 1990. The purpose of the MIRECCs would be (1) to improve and expand the VA's capability to respond to the needs of veterans suffering from mental illness—especially from conditions which are service-related—through research, the training of health personnel, and the development of improved models of clinical services, and (2) to advance scientific knowledge regarding mental illness, especially service-related conditions.

The proposed MIRECCs would be modeled after the successful Geriatric Research, Education, and Clinical Centers (GRECCs), which were provided for in section 302 of Public Law 96-330, enacted in 1980, and of which there are now 12 at VAMCs. The MIRECCs would be designed to (1) congregate at one facility clinicians and investigators with a clear and focused clinical research mission, such as PTSD, schizophrenia, or drug and alcohol abuse; (2) provide training and educational opportunities for students and residents in psychiatry, psychology, nursing, social work, and other professions which treat individuals with mental illness; and (3) develop new models of effective care and treatment for veterans with mental illnesses, especially those which are service connected.

In order to designate a facility as the site for a MIRECC, the Secretary, upon the Chief Medical Director's recommendation, would have to determine that the facility has, or may reasonably be expected to develop (1) arrangements with an affiliated medical school and an affiliated graduate school of psychology for the regular rotation of their residents and students through the center, (2) an arrangement under which nursing or other allied health personnel receive education and training in mental health care through regular rotation through the facility, (3) the ability to attract superior mental illness researchers, (4) a policy-making advisory committee composed of health-care and research representatives of the VA facility and the schools involved, and (5) the capability to evaluate effectively the activities of a MIRECC.

The Committee bill would promote research at the MIRECCs by requiring that, in the awarding of research funds for mental-illness projects, MIRECC applications be given a priority. Centers would include an emphasis on the psychosocial dimension of mental illness and on developing models for furnishing care and treatment of mental illness.

Further, the Committee bill would promote the dissemination of information regarding all aspects of MIRECC activities throughout VHS&RA by requiring the Chief Medical Director to develop continuing education programs provided at Regional Medical Education Centers.

Finally, beginning February 1, 1991, the Secretary would be required to submit three annual reports to the two Veterans' Affairs Committees on the research, educational, and clinical care activities at each MIRECC and on efforts to disseminate the information throughout the VA health-care system. The administration of the program would be assigned to the VA Central Office official responsible for mental health and behavioral sciences—currently the Director of Mental Health and Behavioral Sciences.

The Committee also again urges VA—as it has for the past two years (S. Rept. No. 100-215, page 138, accompanying S. 9, and S. Rept. No. 100-439, page 132, accompanying S. 2011)—to create a Mental Illness Research Service, similar to research services it has created for each of the other categories of research expressly mentioned in the statutory provision, section 4101(c)(1) which establishes VA's research mission. As noted above, section 135 of Public Law 100-322, which originated in this Committee, added specific mention of mental illness to this description of VA's research mission in this section for the purpose, among others, of stressing the importance of such research and the establishment of such a Service. The Committee is firmly convinced that the creation of a separate Service with its own budgetary allocation would help VA to pursue more creatively cost-effective and innovative treatment for veterans suffering from mental illness.

Cost: CBO estimates that enactment of section 204 would entail estimated costs of $3 million in budget authority and $1 million in outlays in FY 1990, and a total of $21 million in budget authority and $22 million in outlays for FYs 1990-1994.

Special Committee on Post-Traumatic Stress Disorder

Section 205 of the Committee bill, which is identical to section 202 of S. 13, which in turn is identical to the provisions of section 602 of S. 2011 as reported by the Committee last August and passed by the Senate on October, 18, 1988, in H.R. 4741, would extend the reporting requirements of VA's Special Committee on PTSD to require that Committee to submit concurrently three additional reports to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives.

Background

The Special Committee was established pursuant to section 110(b) of the Veterans' Health Care Act of 1984, Public Law 98-528, with a mandate to "assess, and carry out a continuing assessment of, the capacity of the Veterans' Administration [now The Department of Veterans Affairs] to provide diagnostic and treatment services for PTSD to veterans eligible for health care furnished by the Veterans' Administration [Department of Veterans Affairs]." That law required VA's Chief Medical Director (CMD) to appoint "qualified employees" of VHS&RA to the Special Committee. The Special Committee currently has 11 members.

The Special Committee has carried out comprehensive reviews of VA's efforts relating to PTSD and has submitted four very thorough, informative, and far-sighted reports to the Secretary setting forth extensive findings and recommendations on such varied topics as (1) methods of diagnosing PTSD, (2) problems of patients seeking care for PTSD, (3) treatment issues at generalized and specialized inpatient units, readjustment counseling (vet) centers, and outpatient clinics, (4) data on VA treatment of PTSD, and (5) research, education, and veterans' benefits related to PTSD. Section 110(e) of Public Law 98–528 required the Administrator of Veterans' Affairs [now the Secretary of Veterans Affairs] to submit to the two Committees on Veterans' Affairs certain reports on the implementation of that section as well as on various other VA activities relating to PTSD. The Secretary submitted each of the Special Committee's first four reports to the Congress along with the CMD's comments. The first report, due on March 1, 1985, was submitted to the Committee on February 18, 1986; the second and third reports, due on February 1, 1986, and 1987, respectively, were submitted together on October 14, 1987; and the fourth report, due on February 1, 1988, was submitted on January 13, 1988. The Committee has generally found these reports and VA's comments on them to be very helpful. The fifth annual report, due by February 1, 1989, was submitted to the Committee on August 31.

Committee bill

In order to ensure that the Special Committee continues its valuable reviews and evaluations and that its findings are promptly reported to VA and to the Veterans' Affairs Committees along with the CMD's comments on each of the Special Committee's recommendations, the Committee bill would require three additional reports by the Special Committee. The first report, due to be submitted to the Veterans' Affairs Committees by December 31, 1989, would be required to set forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans Health Care Amendments of 1983. That study, carried out by the Research Triangle Institute (RTI), was completed on November 7, 1988. The Secretary would be required to submit to the Veterans' Affairs Committees, within 30 days after receiving the report of the Special Committee on PTSD, any comments concerning the report that the Secretary considers appropriate. The second and third reports, due to the Committees on Veterans' Affairs by February 1 of 1991 and 1992, respectively, would be required to provide information updating prior reviews of the overall efforts of VA to meet the needs of veterans with PTSD. Not later than 60 days after receiving each report, the Secretary would be required to submit to the Committees any comments concerning the report that the Secretary considers appropriate.

The Committee has received letters from the Department of Justice (DOJ) regarding the requirement that the Special Committee on PTSD submit concurrently to the Secretary and the Committees on Veterans' Affairs the three reports mandated under this provision. DOJ's letters state that this provision may be an unconstitutional intrusion upon the executive branch authority of the Secretary. The Committee submitted to the American Law Division of the Congressional Research Service the Department's June 8, 1989, and July 26, 1989, letters for comment. The American Law Division concluded that "the challenged reporting provisions of S. 13 and S. 947 are likely to withstand constitutional scrutiny by a reviewing court." The Department's letters and the American Law Division's analysis follow:

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 8, 1989

Honorable Alan M. Cranston
Chairman
Committee on Veterans Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

We are writing to express the views of the Department of Justice with respect to S. 13 and S. 947. The bills propose certain new programs relating to Veterans' Affairs and reports thereon by the Department of Veterans Affairs ("Department"), or by task forces or special committees set up within the Department. We believe that certain of the features in these bills, as presently drafted, present constitutional difficulties. While, if passed by Congress and signed by the President, the executive branch would endeavor to construe and apply these provisions in a constitutional manner, we strongly urge that these constitutional difficulties be addressed and corrected so that the Department need not recommend disapproval by the President.[1]

Certain provisions of S. 13 and S. 947 may impermissibly intrude upon the powers of the Presidency under Article II of the Constitution. These intrusions are of two general types. First, certain provisions of these bills appear to interfere with the President's authority, as head of a unitary executive branch, to coordinate and supervise the public dissemination of his subordinates' views. The Constitution provides that "[t]he executive Power shall be vested in a President of the United States of America" (Art. II, section 1 (emphasis added)), who alone is possessed of the constitutional duty to "take care that the Laws be Faithfully executed" (Article II, section 3, cl. 4). The unitary character of the executive power granted the President requires that the President have the authority to control the deliberative processes within the executive branch, to direct and supervise the actions of his subordinates, and to speak with a single voice to Congress. See generally Myers v. United States, 272 U.S. 52, 163-164 (1926); Adams v. United States, 810 F.2d 1142, 1144 n.1 (Fed. Cir. 1987); The Federalist No. 70, at 354-361 (Hamilton) (G. Wills ed. 1982).

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[1] We also have received your request dated June 5, 1989, to comment upon Section 221 of S. 13. That provision pertains to the Department of Veterans Affairs' security and law enforcement functions. Your request also seeks information concerning this agency's experience in coordinating with the Department of Veterans Affairs under consultation provisions contained in existing law. To avoid delaying transmittal of the Justice Department's comments on the constitutional issues addressed in this letter, we will respond to your June 5 request in a separate reply.

Second, certain provisions of these bills, by requiring executive branch officials to submit to Congress recommendations for legislation, appear impermissibly to intrude on executive branch authority. The Constitution explicitly vests in the President the discretion to decide whether and when executive branch officials should propose legislation. Article II, section 3 provides that the President "shall from time to time . . . recommend to [Congress'] Consideration such Measures as he shall judge necessary and expedient." U.S. Const. Art. II, sec.3 (emphasis added).

1. S. 13, Title II, section 202 requires the Special Committee on Post-Traumatic Stress Disorder ("Special Committee")[2] to submit concurrently to the Secretary of Veterans Affairs and the Committees on Veterans' Affairs of the Senate and the House of Representatives a report setting forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (Pub. L. 98-160; 97 Stat. 994), together with the Special Committee's recommendations for any further research on the matters addressed in the study. The report is also to include the Special Committee's "assessment of the capability of the Department of Veterans Affairs to meet the need for the diagnosis and treatment of post-traumatic stress disorder of veterans, and other psychological problems of veterans in readjusting to civilian life." Section 202(a)(1)(B). The Secretary is then directed to submit within 30 days to the Senate and House Committees "any comments concerning the report that the Secretary considers appropriate." Section 202(a)(2). The Special Committee is

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[2] The Special Committee on Post-Traumatic Stress Disorder was established pursuant to section 110(b)(1) of the Veterans' Health Care Act of 1984, Pub. L. 98-528; 98 Stat. 2691. Under the 1984 Act, the Special Committee is established by the Chief Medical Director of the Veterans' Administration (now the Department of Veterans Affairs) from among qualified employees of the Department. The Special Committee is part of the executive branch.

directed to prepare updated reports in February 1991 and February 1992, to be submitted concurrently to the Secretary and the Senate and House Committees. The updated reports are to include "any additional information the Special Committee considers appropriate regarding the overall efforts of the Department of Veterans Affairs to meet the needs of veterans with post-traumatic stress disorder and other psychological problems in readjusting to civilian life. Section 202(b)(1). The Secretary has 60 days to submit to the Senate and House Committees any comments concerning the report that the Secretary considers appropriate. Section 202(b)(2).

These provisions appear to infringe upon the President's authority as head of a unitary executive to control the presentation of the executive branch's views to Congress. Most constitutionally problematic in this regard are the provisions that require the Secretary to comment on the Special Committee's report, thus implying that the Secretary does not have the authority to review and revise the report before it is sent. The provisions of section 202 requiring the Special Committee on Post-Traumatic Stress Disorder -- a committee within the Department of Veterans Affairs -- to report concurrently to committees of the Congress and to the Secretary of Veterans Affairs, also may imply that the Special Committee is to report to the congressional committees prior to any opportunity for review, analysis, or revision within the executive branch, with the Secretary afforded the opportunity to review and comment on the report only after it has been submitted to the congressional committees.

These constitutional problems may be cured by modifying or deleting the offending language. Section 202(a)(1) and (b)(1) should be changed to make clear that the Special Committee's reports are subject to the prior review and revision of the Secretary, who remains subject to the authority of the President. Section 202(a)(1)(C) should be deleted. Subsections 202(a)(2) and 202(b)(2) should also be deleted, as any comments or revisions by the Secretary should already be incorporated within the reports at the time they are submitted to the congressional committees.

2. Section 225 of S.13 also presents constitutional problems. Section 225 mandates the establishment of a task force within the Department, charged with identifying inconsistencies in various provisions of law relating to veterans' eligibility for certain health-care benefits, and recommending legislation for elimination of the identified inconsistencies. The Secretary is required to "review the report submitted by the task force and either approve the recommendations for legislation contained in the report or prepare alternative legislative proposals that the Secretary considers appropriate for the elimination of the inconsistencies identified by the task force." Section 225(d).

The Secretary is then required to transmit to the congressional committees the task force's report and recommendations for legislation, and "(2) a report containing (A) the legislation recommended by the Secretary for the elimination of the inconsistencies identified by the task force; (B) an analysis of the legislation recommended by the Secretary; and (C) the reasons for any differences between the legislation recommended by the Secretary and the legislation recommended by the task force." Section 225 (e)(1) and (2).

Section 225 may intrude in two ways upon the authority of the President over the executive branch. First, section 225 appears to require that the report of a task force within an executive branch department be submitted to Congress by the head of that department without review or revision. This is constitutionally objectionable for the same reason that the concurrent report requirement of section 202 of S. 13 is constitutionally objectionable -- it impairs the ability of the President to control the decision-making process within the executive branch. Second, section 225 also requires the Secretary to identify to Congress differences of policy within the executive branch, thus infringing the right of the President to preside over an executive branch that speaks with one voice.

In addition, section 225 appears to infringe on the President's prerogatives under the Recommend Measures clause of Article II, section 3, by requiring the Secretary to submit recommendations for legislation, whether they be the recommendations drafted by the task force or the Secretary's alternatives for elimination of the inconsistencies identified by the task force.

These constitutional defects can be remedied by modifying and deleting certain of the section's provisions, without frustrating the apparent purpose of the section. The task force can be retained as a means of identifying inconsistencies in current law, but its recommendations must be for the Secretary only. The task force's conclusions, as well as its recommendations, must be subject to the review and revision of the Secretary, who remains under the authority of the President. The Secretary may be required to submit a report for the Department, identifying inconsistencies in present law in the areas designated. The Secretary could then be asked to submit any policy recommendations and legislative proposals concerning the identified inconsistencies that the executive branch considers appropriate.

3. Section 402 of S. 947 requires the Chief Medical Director of the Department to conduct a pilot program concerning certain pay and personnel management practices of the Veterans Health Services and Research Administration. Section 402(c) requires the Chief Medical Director to submit reports to the

Secretary evaluating the pilot project in a number of respects. The reports are also to contain "any planned administrative actions and any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate to include in the report on the basis of the results of such pilot program." Section 402(c)(1)(A)(v). The Secretary is then directed to submit to the congressional committees on Veterans' Affairs, within 60 days after receiving the Chief Medical Director's report, "a copy of the report, together with any comments on the report and any recommendations for legislation that the Secretary considers appropriate." Section 402(c)(1)(B). These requirements and procedures are repeated for subsequent updated reports. See section 402(c)(2); section 402(c)(3).

These provisions are constitutionally problematic in that, like section 225 of S. 13, they (i) require that the report of a subordinate body or official within an executive branch department (here, the Chief Medical Director rather than a special task force) be submitted to Congress by the head of that department (the Secretary) without review or revision; and (ii) require the Secretary to identify to Congress differences of opinion among subordinate officials within the executive branch by submitting separately his comments on the report of the Chief Medical Director. These requirements appear to infringe the constitutional authority of the President and his subordinates to control the decision-making process within the executive branch.

The constitutional defects in section 402 can be remedied by making the Chief Medical Director's report subject to the review and revision of the Secretary (who remains under the authority of the President) before submission to any congressional committee, and by deleting the provisions requiring the Secretary to submit the Chief Medical Director's report unchanged and to add his comments separately. The Secretary may be required to submit a report for the Department, addressing the matters specified, and including such recommendations, if any, that the Secretary considers appropriate to include in the report on the basis of the pilot program.

The Office of Management and Budget has informed us that it has no objection to the submission of this report.

Sincerely,

Carol T. Crawford
Assistant Attorney General

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General
Washington, D.C. 20530

JUL 2 6 1989

Honorable Alan M. Cranston
Chairman
Committee on Veterans Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing in response to your letter of June 21, 1989, requesting elaboration of the views expressed in our letter of June 8, 1989 concerning constitutional difficulties with S. 13 and S. 947. Your letter requests citations to recent case law in support of our analysis.

Our June 8, 1989 letter discussed the application of two general constitutional principles to various provisions of S. 13 and S. 947 -- the principle that the President is head of a *unitary* executive branch, as provided by Article II, section 1 of the Constitution and the principle that the President and his subordinate executive officers may not be *required* by statute to propose legislation, as explicitly provided by Article II, section 3 of the Constitution. The latter principle has not given rise to any recent court decisions of which we are aware. This may be because the text of the Constitution is quite precise on the issue: the President "shall from time to time . . . recommend to [Congress'] Consideration such Measures *as he shall judge necessary and expedient*." U.S. Const. Art. II, § 3 (emphasis added). The text of the Constitution thus commits the decision whether to recommend legislative measures to Congress to the discretion of the President. As Justice Kennedy wrote in his concurrence (joined by Chief Justice Rehnquist and Justice O'Connor) in *Public Citizen* v. *United States Department of Justice*, 57 U.S.L.W. 4793 (U.S., June 21, 1989), a central feature of the Supreme Court's separation-of-powers decisions has been that "where the Constitution by explicit text commits the power at issue to the exclusive control of the President, [the Court has] refused to tolerate *any* intrusion by the Legislative Branch." *Id*. at 4806 (Kennedy, J., concurring in the judgment) (emphasis in original); *see id*. (collecting and discussing cases). Accordingly, we conclude that the discretion of the President to recommend to Congress such measures as he judges necessary and expedient is not subject to any regulation or interference by statute.

The principle of the unitary executive, provided for at the very outset of Article II of the Constitution, U.S. Const. Art. II, § 1 ("The executive Power shall be vested in a President of the United States of America") (emphasis added), is the foundation of the President's power to supervise and coordinate the actions of subordinate executive officers, including both the internal deliberations of the executive branch and the dissemination of executive branch views to Congress. The President alone is charged with the great power and responsibility to "take care that the Laws be faithfully executed." U.S. Const. Art. II, § 3.

In addition to the cases cited in our June 8, 1989 letter, applicable to the specific issue of the executive's power to speak with a single voice to Congress (Myers v. United States, 272 U.S. 52, 163-64 (1926); Adams v. United States, 810 F.2d 1142, 1144 n.1 (Fed. Cir. 1987)), other recent cases recognizing the prerogatives of the President as head of a unitary executive branch include United States v. Nixon, 418 U.S. 683, 708 (1974) (presumptive constitutional privilege of President with respect to confidentiality of internal deliberations of executive) and Public Citizen, 57 U.S.L.W. at 4807 (Kennedy, J., concurring in the judgment) (Congress may not by statute inhibit President's ability to investigate, be informed, evaluate and consult with advisers with respect to exercise of executive powers).

Moreover, where the Supreme Court has permitted some diminution of the President's control over executive officers, it has been in extraordinary circumstances of inherent conflict of interest, such as in the Independent Counsel case. Morrison v. Olson, 108 S. Ct. 2597 (1988). Even in Morrison, the Court recognized that the President's "constitutional obligation to ensure the faithful execution of the laws," 108 S. Ct. at 2620, generally stands as a bar to legislative acts impairing the President's control and direction of the activities of subordinate executive officials. Id. at 2619-20. The recent cases thus support the constitutional principle that Congress generally may not interfere with the President's power to supervise internal deliberations within the executive branch, to direct and control the actions of his subordinates, and to have the executive branch speak with a single voice to Congress.

We hope that this information is helpful to you.

Sincerely,

Carol T. Crawford

Carol T. Crawford
Assistant Attorney General

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

August 31, 1989

TO : Honorable Alan Cranston, Chairman, Senate Committee on Veterans' Affairs
Attention: Thomas Tighe

FROM : American Law Division

SUBJECT : Constitutionality of Reporting Provisions Required by S.13 and S.947

The Department of Justice (DOJ) has raised constitutional objections to the reporting requirements contained in two bills, S.13 and S.947 (101st Cong., 1st Sess.), under consideration by your Committee.[1] The challenged provisions may be summarized as follows.

Section 202 of S.13 would require the Special Committee on Post-Traumatic Stress Disorder, which was established pursuant to Section 110(b) of the Veterans' Health Care Act of 1984,[2] to submit three reports concurrently to the Secretary of Veterans Affairs (VA) and the Committees on Veterans' Affairs of the Senate and House of Representatives. The first would be a report setting forth the Special Committee's evaluation of the study required by section 102 of the Veterans' Health Care Amendments of 1983,[3] its assessment of VA's ability to meet the health-care needs of veterans with PTSD or other psychological problems in readjusting to civilian life, and its recommendations for any further research on the matters addressed in that study. Within 30 days thereafter, the Secretary would be required to submit to the Committees on Veterans' Affairs any comments concerning the report that the Secretary considers appropriate. The second and third Special Committee reports would be two annual reports, due by February 1 of 1991 and 1992, updating reports previously submitted under Section 110(e) of the

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[1] See letters dated June 8 and July 26, 1989 to Chairman Cranston from Assistant Attorney General Carol T. Crawford, Office of Legislative Affairs, Department of Justice.

[2] Pub. L. 98-528, 98 Stat. 2691, codified at 38 U.S.C., 612A note (Suppl. V 1987).

[3] Pub. L. 98-160, 97 Stat. 994, codified at 38 U.S.C., 612A note (Suppl. V 1987).

1984 Act and providing any additional information the Special Committee considers appropriate regarding overall VA efforts to meet the needs of veterans with PTSD or other psychological problems in readjusting to civilian life. Within 60 days after each of these reports is submitted, the Secretary would be required to submit to the Veterans' Affairs Committees any comments concerning the reports that the Secretary considers appropriate.

Section 225 of S.13 as introduced would require the Secretary to establish a task force comprising representatives of certain components of VA to identify inconsistencies among various provisions of Title 38, United States Code, relating to eligibility for certain medical and assistive devices and special services, and to develop policy recommendations and legislative proposals for the elimination of such inconsistencies. The task force would be required to submit to the Secretary a report containing the policies and legislative proposals it recommends for the elimination of any inconsistencies it found, and the reasons for each such recommendation. Thereafter, the Secretary would be required to submit to the Veterans' Affairs Committees the report of the task force and a report containing the Secretary's recommendations and the reasons for any differences between the task force's and the Secretary's recommendations. In the bill, as ordered reported, the Secretary would be required to name representatives of veterans service organizations, as well as VA employees, as members of the task force.

Section 402 of S.947 requires VA's Chief Medical Director (CMD) to conduct a pilot program involving certain innovative pay and personnel management practices. Section 402(c) requires the CMD to submit reports to the Secretary evaluating the pilot project in various respects. The reports are also to contain "any planned administrative actions and any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate to include in the report on the basis of the results of such pilot program." The Secretary is directed to submit to the Committees on Veterans' Affairs, within 60 days after receiving the report, "a copy of the report, together with any comments on the report and any recommendations for legislation that the Secretary considers appropriate." These requirements are repeated for subsequent update reports.

DOJ contests the constitutional validity of these provisions on two grounds. First, some of the requirements of the bills are claimed "to interfere with the President's authority, as head of a unitary executive branch, to coordinate and supervise the public dissemination of his subordinates' views.... The unitary character of the executive power granted the President [under Article II] requires that the President have the authority to control the deliberative processes within the Executive Branch, to direct and supervise the actions of his subordinates, and to speak with a single voice to Congress." Second, other provisions of the bills are deemed infirm because they violate "the principle that the President and his subordinate executive officers may not be *required* by statute to propose legislation, as explicitly provided by Article II, Section 3 of the Constitution."[4]

You have inquired as to the substantiality of DOJ's constitutional objections. We conclude, based upon a review of recent relevant Supreme Court decisions and the longstanding historic congressional practice with respect to executive reporting requirements, that the reporting requirements proposed by S.13 and S.947 are likely to withstand constitutional scrutiny by a reviewing court.

It may be noted at the outset that DOJ's position in the instant matter is not an isolated instance of resistance to the particular provisions in question here, but is reflective of a broader pattern of opposition to congressional proposals that seek to limit the Executive's control over subordinate executive branch officials by such means as limitations on the President's ability to remove his appointees at will or requiring direct reporting to the Congress.[5] Recently, and highly pertinent to the matter under consideration, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion on March 24, 1989 advising that, except in the most "extraordinary circumstances," IG's should not accede to congressional requests for information with respect to ongoing investigations: "[W]e can advise that as a general matter Congress has a limited oversight interest in the conduct of an ongoing criminal investigation and the executive branch has a strong interest in preserving the confidentiality of such investigations. Accordingly, in light of established executive branch policy and practice, and absent extraordinary circumstances, an IG should not provide Congress with confidential information concerning an open criminal investigation."[6] The OLC opinion also concluded that the Inspector General Act[7] does "not require IG's to disseminate confidential information pertaining to open criminal investigations."[8] The Justice Department of late has almost uniformly opposed proposed legislation that contains for cause removal limitations or direct reporting requirements.[9]

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[4] Emphasis in original text. Article II, Section 3 provides that the President "shall, from time to time, give to the Congress information on the state of the Union, and recommend to their consideration, such measures as he should judge necessary and expedient."

[5] For a detailed review of the development of this pattern of opposition to congressional controls, see Rosenberg, *Congress' Prerogative Over Agencies and Agency Decisionmakers: The Rise and Demise of the Reagan Administration's Theory of the Unitary Executive*, 57 Geo. Wash. L.Rev. 627 (1989) (hereinafter *Unitary Executive*).

[6] Memorandum dated March 24, 1989 for Oliver B. Revell, Chairman, Investigations/Law Enforcement Committee, President's Council on Integrity and Efficiency, entitled "Congressional Request for Information From Inspectors General Concerning Open Criminal Investigations," from Assistant Attorney General Douglas W. Kmiec, Office of Legal Counsel, DOJ, at 8-9.

[7] 5 U.S.C. Appendix (1988).

DOJ's position rests on a view of the Executive Branch as a highly centralized bureaucratic structure. This model of governance envisions a unified and hierarchical executive with the President at the apex and all administrative agencies arrayed below him. It views the President, in his role as the only nationally elected official of the federal government, as the possessor of broad supervisory and managerial powers as well as an encompassing political presence in administrative agencies. The Chief

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[8] OLC Memorandum, *supra* note 6 at 9-13. The OLC's conclusions and rationale underlying them have been vigorously challenged by the House General Counsel. See, Memorandum dated May 2, 1989 to Honorable Jack Brooks, Chairman, House Judiciary Committee from Steven R. Ross, General Counsel to the Clerk. More recently, DOJ challenged the constitutionality of a provision of the FY 1990 Intelligence Authorization Bill, H.R. 2748, which would require the Director of Central Intelligence to furnish reports of the CIA Inspector General upon the request of either of the congressional intelligence committees. Relying on opinions of the House General Counsel and the Congressional Research Service, the House Permanent Select Committee on Intelligence retained the contested provision and reported it favorably to the floor. See H. Rept. No. 101-215, Part I, 101st Cong., 1st Sess., 12, 33-54 (1989).

[9] See, *e.g.*, letter dated August 17, 1989 to Honorable Howard M. Metzenbaum, Chairman, Senate Subcommittees on Labor, Committee on Labor and Human Resources from Assistant Attorney General Carol T. Crawford, Office of Legislative Affairs, DOJ (provisions of S.436, the Employee Health and Safety Whistleblower Protection Act, which would allow the Department of Labor to enforce orders against sister agencies in civil suits and to seek court enforcement of subpoenas against Executive Branch officials in district courts, deemed unconstitutional); letter dated June 12, 1989 to Honorable Lloyd Bentsen, Chairman, Senate Committee on Finance from Assistant Attorney General Carl T. Crawford, Office of Legislative Affairs, DOJ (for cause removal restrictions and reporting requirements in S. 216, the Social Security Reform Act of 1989, deemed unconstitutional); letter dated May 17, 1989 to Honorable Bruce F. Vento, Chairman, House Subcommittee on National Parks and Public Lands, Committee on Interior and Insular Affairs from Acting Assistant Attorney General Carol T. Crawford, Office of Legislative Affairs, DOJ (for cause removal restrictions and reporting requirements in H.R. 1484 deemed unconstitutional; bill passed House July 17, 1989, 134 Cong. Rec. H.3767-3779 (daily ed. July 17, 1989)); 24 Weekly Comp. Pres. Doc. 1377 (Oct. 31, 1988) (Presidential statement on pocket veto of S. 508, the Whistleblower Protection Act of 1988 on grounds that for cause removal and direct reporting provisions are unconstitutional; bill enacted into law with controverted provisions in 101st Congress, see Pub. L. 101-12).

Executive's constitutional duty to see that the laws are faithfully executed under Article II, Section 2 is seen as providing both the responsibility and the authority to intervene in administrative decisions in order to set priorities, allocate limited resources, balance competing policy goals, resolve conflicting jurisdictions and responsibilities of agencies, and assure that programs are effectively and efficiently managed. Support for this proposition is founded on language in the Supreme Court's opinion *Myers v. United States* where it stated that "[t]he ordinary duties of officers prescribed by statute come under the general administrative control of the President by virtue of the general grant to him of executive power, and he may properly supervise and guide their construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article II of the Constitution evidently contemplated in vesting general executive power in the President alone."[10]

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[10] *Myers v. United States, supra*, 272 U.S. 52, 135 (1926). See also *In re Sealed Case*, 838 F.2d 476 (D.C. Cir. 1988) *rev'd sub. nom. Morrison v. Olson*, 108 S.Ct. 2597 (1988). For a detailed explanation and critique of the unitary executive theory, see Unitary Executive, *supra* note 5, 57 Geo. Wash. L. Rev. at 649-662. DOJ inexplicably relies in its letters, *supra* note 1, on a footnote reference in *Adams v. U.S.*, 810 F.2d 1142, 1144, n.1 (Fed. Cir. 1987), for the proposition that the "unitary character of executive power granted the President requires that the President have the authority to control the deliberative processes within the Executive Branch, and to direct and supervise the actions of his subordinates, and to speak with a single voice to Congress." *Adams* involved a claim by employees of the Treasury Department's Bureau of Engraving and Printing (BEP) that the Department be required to ignore the limitation of a 4% pay increase imposed by the Department on its employees. By law, pay of BEP employees is determined by Secretary "as is nearly consistent with the public interest in accordance with prevailing rates." The court held that the Secretary had broad statutory discretion over BEP and had properly exercised it there in overruling a recommendation of higher pay by the Director of BEP since Treasury, not BEP, was the employing agency. In the footnote referenced by DOJ, the court opined that the same conclusion would be reached even if BEP were the "formal employer", quoting as authority an excerpt from *Congress Construction Corp. v. U.S.* 314 F.2d 527, 530 (Ct. Cl.), *cert. denied*, 375 U.S. 817 (1963), which states, "[W]hen purely executive functions of a discretionary nature are imposed on a subordinate official of the Government, it is an implied condition that his actions (before they have become final) are subject to the review and supervision of his superiors-----*if the superior is authorized to intervene in that particular field and does so in time.*" (emphasis supplied) The Treasury Secretary in *Adams* clearly had statutory authority to intervene. In the instant situation, the Secretary of Veterans Affairs is precluded from reviewing and altering the required reports. Thus *Adams* stands for the proposition that where Congress vests an unreviewable discretionary duty in a subordinate officially, a superior official is powerless to intervene, and is therefore directly contrary to the principle which DOJ cites it for. Indeed, Congress' power to

However, the substantiality of these views of presidential supremacy over the executive bureaucracy were emphatically rejected by the Supreme Court's decisions in *Morrison v. Olson*,[11] upholding the validity of the appointment and removal conditions for independent counsel under the Ethics in Government Act, and *Mistretta v. United States*,[12] sustaining the constitutionality of the composition, location and powers of the United Sentencing Commission. In opinions remarkable for their breadth and near unanimity,[13] the High Court unequivocally dealt with the notion of a unitary executive. Addressing the argument of dissenting Justice Scalia in *Morrison* that "the language of Article II vesting the executive power of the United States in the President requires that every officer of the United States exercising any part of that power must serve at the pleasure of the President," Chief Justice Rehnquist held that "[t]his rigid demarcation -- a demarcation incapable of being altered by law in the slightest degree, and applicable to tens of thousands of holders of offices neither known nor foreseen by the framers -- depends upon an extrapolation from general constitutional language which we think is more than the text will bear."[14] In *Mistretta*, Justice Blackmun, rejecting the contention that Congress was without authority to locate an agency with no judicial powers in the Judicial Branch, determined that "[o]ur constitutional principles of separated powers are not violated, however, by mere anomaly or innovation ... Congress' decision to create an independent rulemaking body to promulgate sentencing guidelines and to locate that body within the Judicial Branch is not unconstitutional unless Congress has vested in the Commission powers that are more appropriately performed by the other Branches or that undermine the integrity of the Judiciary."[15] In both decisions the Court expressed unequivocal approbation of a very far reaching, though not limitless, power in Congress over agency structure, location and relationships that may properly have as its principal object the desire to limit the President's influence over the development and implementation of administration policy. The Court underlined its intended

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vest such unreviewable discretionary duties was reaffirmed in *Public Citizen* v. *Burke*, 655 F. Supp. 318 (D.D.C. 1987), *aff'd*, 843 F.2d 1473 (D.C. Cir. 1988) (Archivist may reject claims of executive privilege by former President, as authorized by law). See also *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 166 (1803); *Kendal* vs. *U.S. ex rel Stokes*, 37 U.S. (12 Pet.) 524, 610 (1838); *Ameron Inc.* v. *U.S. Corps of Engineers*, 809 F.2d 979 (3d Cir. 1986), cert dismissed 109 S.Ct. 297 (1989).

[11] 108 S. Ct. 2597 (1988).

[12] 109 S.Ct. 647 (1989).

[13] Only Justice Scalia dissented in both cases.

[14] 108 S.Ct. at 2618, note 29.

[15] 109 S.Ct. at 661.

deference to the congressional prerogative in this area by adopting the pragmatic, balancing approach first enunciated in *Nixon v. Administrator of General Services*[16] for such agency relationship type cases, an approach that has yet to produce even a single limitation on the exercise of legislative power in separation litigation.

The Court specifically dealt with a for cause removal limitation issue in *Morrison v. Olson*. There it had been argued that since an independent counsel is removable by the Executive, through the Attorney General; only for "good cause," such statutory limitation on the President's "at will" removal authority of an officer who is exercising purely executive functions unduly interferes with the President's constitutional duties and prerogatives and thereby violates separation of powers principles. In rejecting this contention, the Court reconciled its confusing prior jurisprudence on removal, and at the same time put to rest any hopes of any expansion of presidential power over agencies.

The Court held that the validity of insulating an inferior officer from at will removal by the President will no longer turn on whether such an officer is performing "purely executive" or "quasi" legislative or "quasi" judicial functions. The issue raised by a for cause removal limitation, the majority opinion explained, is whether it interferes with the President's ability to perform his constitutional duty.[17] It is in that light that the function of the official in question must be analyzed. In the case before it the Court noted that the independent counsel's prosecutorial powers are executive in that they have "typically" been performed by Executive Branch officials. But, the Court held, the exercise of prosecutorial discretion is in no way "central" to the functioning of the Executive branch. Further, since the independent counsel could be removed by the Attorney General, this is sufficient to ensure that she is performing her statutory duties, which is all that is required by the "take care" clause.[18] Finally, the limited ability of the President to remove, through the Attorney General, the independent counsel was also seen as leaving enough control in his hands to reject the argument that the scheme of the Ethics in Government Act impermissibly undermines executive powers or disrupts the proper constitutional balance by preventing the Executive from performing his functions.[19] Although the Court did not define with particularity what would constitute sufficient "cause" for removal, it did indicate that it would at least encompass misconduct in office.[20]

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[16] 433 U.S. 425, 443 (1977).

[17] 108 S.Ct. at 2617-19.

[18] *Id.* at 2619-20.

[19] *Id.* at 2621-22.

[20] *Id.* at 2620, 2621.

In sum, then, *Morrison* appears to vitiate the essential supporting legal rationale of the unitary executive theory, *i.e.*, that the President must have the absolute discretion to direct, control and discharge at will subordinate officials whose functions include purely executive tasks. *Morrison* teaches that there are no rigid categories of officials who may or may not be removed at will. The question that arises in such cases is whether a for cause provision impermissibly undermines executive powers or would disrupt the proper balance between the coordinate branches by preventing the Executive from performing his assigned functions.

Thus the Court in *Morrison* has adopted the pragmatic, functional analysis approach exemplified by *Nixon v. Administrator of General Services*[21] and *Commodity Futures Trading Commission v. Schor*[22] for agency functioning type cases. In such cases there is no issue of one branch attempting to increase its powers at the expense of another as was the situation in *INS v. Chadha* or *Bowsher v. Synar*.[23] Indeed, where the question of agency functioning is involved, the issue of aggrandizement is seen as essentially irrelevant.[24] The key question in disputes over agency arrangements is whether so much has been taken from the functioning of one constitutional actor as to impair its core duty. Thus functional analysis comes into play. The Court sees its task as assuring itself that the essential lines of authority from the constitutional actors -- Congress, the President, and the Judiciary -- to the agencies remain intact. The review of impact on the respective relationships is, then, not concerned solely with aggrandizement but with maintaining the relative functional balance between the constitutional actors and the agencies. Future congressional attempts to insulate decisions and decisionmakers from presidential control to one degree or another will be subjected to this somewhat lenient test.[25]

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[21] 433 U.S. 425, 443 (1977).

[22] 478 U.S. 833, 851 (1986).

[23] *Morrison v. Olson, supra,* 108 S.Ct. at 2620-21.

[24] *Id.*

[25] Indeed, the first appellate court ruling dealing with such an issue clearly adopted the *Morrison-Schor-Nixon v. Administrator of General Services* approach. In *S.E.C. v. Blinder*, Robinson & Co., 855 F.2d 677 (10th Cir., 1988), *cert. denied* 57 U.S.L.W. 3552 (U.S. S. Ct. 1989), the Tenth Circuit rejected the argument that the power vested in the Securities Exchange Commission to commence civil enforcement actions was a violation of the separation of powers doctrine in that the President's ability to "take care" that the laws are faithfully executed is impeded because he cannot remove members of the Commission at will -- a contention premised on the idea that prosecutorial discretion is a core executive function from which the President

Confirmation of the Court's support of a broad congressional authority over agency structure, and the flexible standard by which it will test such exercises of power, is further evidenced in its 8-1 ruling in *Mistretta v. United States,*[26] rejecting a broad ranging separation of powers challenge to the United States Sentencing Commission. Petitioners argued that the Commission, an independent agency in the Judicial Branch vested with power to promulgate binding sentencing guidelines, violated the separation doctrine by its placement in the Judicial Branch, by requiring federal judges to serve on the Commission and to share their authority with non-judges, and by empowering the President to appoint Commission members but limiting his power to remove them only for cause.

The Court rejected these contentions and in the course of its opinion reiterated its understanding that the separation principle does not require a rigid compartmentalization of the branches but rather recognizes "that our constitutional system imposes upon the Branches a degree of overlapping responsibility, a duty of interdependence as well as independence the absence of which 'would preclude the establishment of a Nation capable of governing itself effectively.'"[27] The function of the separation principle is to preserve this flexibility while guarding against "the accumulation of excessive authority in a single branch" through encroachment and aggrandizement by one branch against another. The Court explained that "[i]t is this concern of encroachment and aggrandizement that has animated our separation-of-powers jurisprudence and aroused our vigilance against the 'hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power.'"[28] Reviewing its precedents, it noted those instances where it had "invalidated attempts by Congress to exercise the responsibilities of other Branches or to reassign powers vested by the Constitution in either the Judicial Branch or the Executive Branch",[29] and contrasted them with cases in which "we have upheld statutory provisions that to some degree commingle the functions of the Branches, but that pose no danger of either

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cannot be divested.

[26] 109 S.Ct. 647 (1989).

[27] 109 S.Ct. at 659.

[28] *Id.*

[29] *Id.* at 660, citing *Bowsher v. Synar,* 478 U.S. 714 (1986)(Congress may not retain removal power over officer exercising executive functions); *INS v. Chadha,* 462 U.S. 919 (1983)(Congress may not control execution of laws except through Article I procedures); *Northern Pipeline Construction Co. v. Marathon Pipeline Co.,* 458 U.S. 50 (1982)(Congress may not confer Article III power on Article I judges).

aggrandizement or encroachment."[30] In these latter situations, which involve the congressional ordering of arrangements within or between agencies in areas of shared responsibility and in which congressional action does not contravene any express constitutional provision, the Court explained that it applies a pragmatic balancing test in which it determines whether the challenged arrangement "prevents the Executive Branch from accomplishing its assigned functions," and, if so, "whether the impact is justified by an overriding need to promote objectives within the constitutional authority of Congress."[31]

The Department of Justice's position with respect to the proposed reports requirements of S.13 and S.947 is arguably wholly inconsistent with the pragmatic approach reflected in the Supreme Court's most recent separation of powers opinions. Thus the Court in *Mistretta* stated that "our principle of separation of powers anticipates that the coordinate branches will converse with each other on matters of vital common interest."[32] In *Morrison*, the Court characterized "Congress' role under the [independent counsel statute] .. of receiving reports or other information and oversight of the independent counsel's activities" as being "incidental to the legislative function of Congress."[33]

However, Congress' authority to impose direct reporting requirements on agency officials, while amply supported by the case law just reviewed, also rests independently on Congress' constitutional prerogative to inform itself in aid of its legislative functions. Here both historical practice and judicial precedent support the validity of such provisions.

It is well settled that Congress in legislating pursuant to the powers granted it under Article I, section 8 of the Constitution, as well as powers granted in other parts of the Constitution, has the authority, under the Necessary and Proper Clause, Art. I, § 8, cl. 18, to create the bureaucratic infrastructure of the Executive branch and to determine the nature, scope, power and duties of the offices so created.[34] Moreover, as a general matter, the Supreme Court has spoken very broadly of the legislative power over offices. Where Congress deals with the structure of an office -- its creation, location, abolition, powers, duties, tenure, compensation and other such incidents -- its power is virtually plenary.[35] Only where the object of the exercise of the power is clearly seen in the particular situation as an attempt to effect an unconstitutional purpose, *e.g.*, congressional appointment or removal of an officer,[36] have the courts felt constrained to intervene. As has been noted, most recently the Court in *Morrison* reaffirmed Congress' authority to require the submission of reports and other information to it from officials, and the exercise of oversight over agencies, "as functions that we have recognized generally as being incidental to the legislative function of Congress."[37]

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[30] *Id.* at 660, citing *Morrison v. Olson*, 108 S.Ct. 2597 (1988)(upholding judicial appointment of independent counsel and limiting presidential removal for cause); and *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833 (1986)(upholding agency's assumption of jurisdiction over state-law counterclaims).

[31] *Id.*, citing *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1979); *Commodity Futures Trading Commission v. Schor*, *supra*, 478 U.S. at 851; and *Morrison v. Olson*, *supra*, 108 S.Ct. at 2620-21.

[32] *Mistretta*, *supra*, 109 S. Ct. at 673.

[33] *Morrison*, *supra*, 108 S. Ct. at 2621, citing *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

With particular regard to the subject matter in question, the Supreme Court in *Nixon v. Administrator of General Services* had occasion to note that "there is abundant statutory precedent for the regulation and mandatory disclosure of documents in the possession of the Executive Branch" and that "[s]uch regulation of material generated in the Executive Branch has never been considered invalid as an invasion of its autonomy."[38] There the Court cited with approval the Freedom of Information Act,[39] the Privacy Act of 1974,[40] the Government in the Sunshine Act,[41] the Federal Records Act,[42] and provisions concerned with census data[43] and tax returns[44] as appropriate instances of such regulation. In *Nixon* itself, the Court upheld the Presidential Recordings and Materials Preservation Act,[45] which regulates, *inter alia*, public access to President Nixon's presidential papers, against presidential claims of violations of the doctrines of separation of powers and executive privilege.

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[34] *Buckley v. Valeo*, 424 U.S. 1, 138 (1976).

[35] See, *e.g.*, *Crenshaw v. United States*, 134 U.S. 99, 105-06 (1890); *Morrison v. Olson*, 108 S.Ct. 2597 (1988); *Mistretta v. United States*, 109 S.Ct. 647 (1989).

[36] See *Buckley v. Valeo*, 424 U.S. 1 (1976); *Bowsher v. Synar*, 478 U.S. 714 (1986).

[37] *Morrison v. Olson*, *supra*, 108 S.Ct. at 2621, citing *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927).

[38] *Nixon v. GSA*, 433 U.S. 425, 445 (1977).

[39] 5 U.S.C. 552 (1988).

[40] 5 U.S.C. 552a (1988).

[41] 5 U.S.C. 552(b)(1988).

[42] 44 U.S.C. 2101 *et. seq.* (1982).

[43] 13 U.S.C. 8-9 (1982).

[44] 26 U.S.C. 6103 (1982).

In fact, statutory requirements that Executive Branch officials report directly to the Congress trace their roots to the very first Congress. The legislation establishing the Treasury Department required the Secretary to report to Congress "and generally perform all such services relative to the finances, as he shall be directed to perform."[46] Pursuant to this mandate, Alexander Hamilton, the first Secretary of the Treasury, submitted seminal reports to the Congress at the direction of the House of Representatives. Each report begins with an acknowledgement of the order of the House which had directed him to report.[47] Prior to the passage of the Budget and Accounting Act of 1921,[48] which established the President's authority over the agency budget process, each agency had submitted its annual budget request directly to Congress. Finding this process inefficient and unwieldy, Congress created the Bureau of the Budget (now the Office of Management and Budget) to review the morass of agency budgetary information and to approve agency budget requests.[49] In addition to authority to review and approve agency budget requests, the Bureau was subsequently authorized to clear proposals for legislation or agency comments on proposed legislation.[50]

However, Congress' voluntary relinquishment of this authority has not been unequivocal. Either House may request an agency official to submit directly to it "an appropriation estimate or request, a request for an increase in that estimate or request, or a recommendation on meeting the financial needs of the Government."[51] Also, Congress has selectively required simultaneous or unaltered submission of budget requests and legislative proposals and comments that limit review by OMB of budget requests, legislative proposals, review of proposed agency rules, and other required reports and documents. Thus, since 1973, Congress has mandated that the budget requests of the U.S. Postal Service,[52] and the U.S. International Trade Commission,[53] be submitted to Congress without revision, and that the budget requests and legislative proposals of other agencies be submitted concurrently to OMB and the Congress.[54] Also, Congress has exempted the Securities and Exchange Commission, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and the National Credit Union Administration from OMB clearance of their legislative proposals and comments.[55] OMB also has been precluded from imposing E.O. 12,291 review on Agricultural Marketing orders of the Department of Agriculture or regulations of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department.[56] OMB may review reports to Congress required of the Secretary of Health and Human Services but it may not revise them or delay their timely submissions.[57] Reports and documents required by Congress of the Inspector General of the Department of Energy need no clearance or approval beyond the Secretary of Energy or Federal Energy Regulatory Commission.[58] And no clearance is required for reports of the Chief Counsel of the Office of Advocacy of the Small Business Administration.[59]

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[45] 44 U.S.C. 2201 (1982).

[46] Act of September 2, 1789, ch. 12, Sec. 2, 1 Stat. 65, 66.

[47] See, *e.g.*, Report of Public Credit, 2 Annals of Congress 1991 (1790); Report on a National Bank, *id.*, 2031; Report on Manufactures, 3 Annals of Congress 971 (1791) ("The Secretary of the Treasury, in obedience to the order of the House of Representatives ...").

[48] 42 Stat. 20 (1921).

[49] See generally, L. Fisher, Presidential Spending Power, ch. 1 (1975).

[50] *See* Reorganization Act of 1939, ch. 36, Tit. II, 53 Stat. 565 (codified at 31 U.S.C. 1108 (1982)).

[51] 31 U.S.C. 1108(e)(1982).

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[52] *See* Act of June 30, 1974, Pub. L. No. 93-328, § 23, 88 Stat. 287 (codified at 39 U.S.C. § 2009 (1982)).

[53] *See* Trade Act of 1974, Pub. L. No. 93-618, § 175(a)(1), 88 Stat. 1978 (1975) (codified at 19 U.S.C. § 2232 (1976)).

[54] *See, e.g.*, Privacy Act of 1974, Pub. L. No. 93-579, § 5(a)(5), 88 Stat. 1896 (reprinted in 5 U.S.C. § 552a app., at 318 (1976) (Privacy Protection Study Commission); Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, § 101(a)(3), 88 Stat. 1389 (1974) (codified at 7 U.S.C. § 4a(h)(1)-(2)(1982)) (Commodity Futures Trading Commission); Consumer Product Safety Act, Pub. L. No. 92-573, § 27(k), 86 Stat. 1207 (1972) (codified at 15 U.S.C. § 2076(k) (1982) (Consumer Product Safety Commission); Hazardous Materials Transportation Act, Pub. L. No. 93-633, § 304(b)(7), 88 Stat. 2156 (1975) (codified at 49 U.S.C. § 1903(b)(7)(1982)) (National Transportation Safety Board); Civil Service Reform Act of 1978, Pub. L. No. 95-454, § 202(a), 92 Stat. 1122 (codified at 5 U.S.C. § 1205(j)(1982) (Merit Systems Protections Board); Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 311, 90 Stat. 60 (codified at 31 U.S.C. § 1108(f)(1982)) (Interstate Commerce Commission); Department of Energy Act, Pub. L. No. 95-91, § 401, 91 Stat. 582 (codified at 42 U.S.C. § 717(j)(1982)) (Federal Energy Regulatory Commission); AMTRAK Improvement Act of 1973, Pub. L. No. 93-146, § 12, 87 Stat 553 (codified at 45 U.S.C. § 601(d)(1976) (National Railroad Passenger Corporation); Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, § 2021, 87 Stat. 990 (codified at 45 U.S.C. § 712(f)(1982)) (U.S.Railway Association).

[55] Act of Oct. 28, 1974, Pub. L. No. 93-495, § 111, 88 Stat. 1500 (codified at 12 U.S.C. § 250 (1982)).

[56] Executive Office Appropriations Act, 1987, as included in Public Laws 99-500 and 99-591, section 101(m).

Moreover, the statute books are replete with Executive Branch reporting requirements that range from periodic general submissions to reports that may be triggered by the occurrence of a specified event or executive action or by the mandate of a House or individual committee. At present, some 482 such reporting requirements are imposed on the President himself in all areas of his executive purview, including the areas of national defense and security and foreign affairs.[60] Over 3,250 reports are required of cabinet level departments and independent agencies, boards and commissions.[61] As with the presidential reporting requirements, the substantive areas of policy implementation covered encompass national defense, national security, and foreign affairs. Thus the practice of requiring executive reports to the Congress has a strong historic foundation. Its legal support appears equally substantial.

The Supreme Court has long recognized the validity of direct reporting requirements.[62] In *INS v. Chadha*, contrary to the assertion of the DOJ memorandum, the Court carefully noted that in invalidating all forms of the legislative veto, it was not casting any doubt on congressional reporting requirements. The Court emphasized that its limitation on the veto device:

> does not mean that Congress is required to capitulate to "the accretion of policy control by forces outside its chambers ...." The Constitution provides Congress with abundant means to oversee and control its administrative creatures. Beyond the obvious fact that Congress ultimately controls administrative agencies in the legislation that creates them, other means of control, such as

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[57] 42 U.S.C. 242m (a)(3) (1982).

[58] 42 U.S.C. 7138(f) (1982).

[59] 15 U.S.C.A. 634 (1989 Suppl.).

[60] Clerk, U.S. House of Representatives, "Reports To Be Made To Congress," House Doc. No. 101-17, pp. 13-34, 101st Cong., 1st Sess. (1989).

[61] *Id.* at 38-167.

[62] See, *e.g.*, *INS v. Chadha*, 462 U.S. 919, 935 nn. 9 and 19 (1987); *Sibbach v. Wilson and Co.*, 312 U.S. 1 (1941).

> durational limits on authorizations and formal reporting requirements, lie well within Congress' constitutional power.[63]

At the core of this aspect of congressional authority is the recognition of the legislature's need for reliable information in order to fulfill its constitutionally mandated functions. As a general proposition it may be posited that, in the absence of a countervailing constitutional privilege or a self-imposed statutory restriction upon its authority, the Congress (and its committees) has plenary power to compel information needed to discharge its legislative function from executive agencies, private persons, and organizations, and, within certain constraints, the information so obtained may be made public. The fact that the Executive has determined for its own internal purposes that a particular item should not generally be disclosed does not prevent either House of Congress, or its committees and subcommittees, from obtaining and publishing information that it considers essential for the proper performance of its functions. The case law delineating Congress' expansive oversight authority demonstrates its virtually plenary power in this area.

Thus, although there is no express provision of the Constitution which specifically authorizes the Congress to conduct investigations and take testimony for the purpose of performing its legitimate functions, the practice of the British Parliament and numerous decisions of the Supreme Court of the United States have firmly established that the investigatory power of Congress is so essential to the legislative function as to be implied from the general vesting of legislative power in Congress.[64] Chief Justice Warren speaking for the Court in *Watkins* described the power as follows:

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[63] *Chadha*, 462 U.S. at 955 n. 19. The *Chadha* court also cites a number of instances in which the Constitution explicitly allows legislative action by one House. See 462 U.S. at 955-56. Included in those exceptions is the power of each House under Art. I, Sec. 5, cl. 2 to "determine the rules of its proceedings." That authority, together with its implicit authority to oversee and investigate in aid of its legislative function, underlies the unquestionable ability of authorized committees to issue compulsory process. See, *e.g.*, *McGrain v. Daugherty*, 273 U.S. 135, 151 (1927). It would seem anomalous to argue that Congress cannot demand in advance by law what it may contemporaneously compel by the action of a committee alone.

[64] *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Watkins v. United States*, 354 U.S. 178 (1957); *Barenblatt v. United States*, 360 U.S. 109 (1959); *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975); *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977); see also, *United States v. A.T.T.*, 551 F.2d 384 (D.C. Cir. 1976) and 567 F.2d 1212 (D.C. Cir. 1977).

> We start with several basic premises on which there is general agreement. The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possible needed statutes. It includes surveys of defects in our social, economic, or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. But broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress ... Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress.[65]

Legitimate legislative tasks encompassing the power have been defined as activities that are "an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House."[66]

In *Eastland v. United States Servicemen's Fund,* the Court reiterated its view that the power of effective congressional inquiry is an integral part of the legislative process:

> The power to investigate and to do so through compulsory process plainly falls within [the *Gravel* definition of legitimate legislative tasks]. This Court has often noted that the power to investigate is inherent in the power to make laws because "[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change." *McGrain v. Daugherty,* 273 U.S. 125 175 (1927) ... Issuance of subpoenas such as the one in question here has long been held to be a legitimate use by Congress of its power to investigate ...

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[65] 354 U.S. at 187.

[66] *Gravel v. United States,* 408 U.S. 606, 625 (1973).

> "[W]here the legislative body does not itself possess the requisite information--which not infrequently is true-- recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete, as some means of compulsion are essential to obtain what is needed." *McGrain v. Daugherty, supra*, at 175.[67]

These broad principles of congressional investigatory authority apply *a fortiori* to the exercise of Congress' Article I power to create the agencies and offices necessary to carry out its policy directives and to devise effective mechanisms to ensure that those directives are carried out.[68] Anticipation of a legislative need to know accurately what an agency official actually thinks with respect to his agency's budget, or about changes in his agency's legislative authority, or, as in the instant situation, where an officer has been installed specifically to ferret out agency fraud, corruption or waste, to know if that task is being effectively carried out, whether reflected in an identifiable document or in his personal knowledge, would appear well within the congressional prerogative. The legislative history of the reporting provisions involved here[69] underlines this very expectation.

The Senate Report accompanying S.578, the Veterans' Health Care Amendments of 1983,[70] acknowledged that Congress' recent recognition of the existence and disabling nature of post-traumatic stress disorder among Vietnam veterans (PTSD), and the need for therapeutic counseling, was accompanied by a significant lack of hard information as to "the prevalence and incidence of PTSD in the Vietnam era veteran population, the effects of various levels of PTSD severity in terms of the veteran's ability to function in society, or the VA's capacity to provide assistance, either through the Veteran Center program or otherwise, for veterans suffering from PTSD or related readjustment assistance[71] Section 102 of the 1983 Act sought "[t]o remedy this information gap" by directing the then Administrator to conduct a comprehensive study of PTSD and to report to the Veterans' Affairs

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[67] *Eastland v. United States Servicemen's Fund,* 421 U.S. 491, 504-505, (1975).

[68] *Buckley v. Valeo, supra*, at 138.

[69] Publ. L. 95-452, codified at 5 U.S.C. Appendix (1988).

[70] S. Rep. No. 98-145, 98th Cong., 1st Sess. (1983).

[71] *Id.* at 32.

Committees of both Houses. The Senate Report anticipated that the "information in this [required] report should be of significant use to the Committee and the Congress in considering the future shape and direction of the readjustment counseling program."[72] The Veterans' Health Care Act of 1984[73] reiterated recognition of its need for concrete information on the nature and prevalence of PTSD and the ability of the VA to ameliorate the problem. Section 110(b) directed the Chief Medical Director to establish a Special Committee on PTSD which was to assess VA's capacity to provide diagnostic and treatment services for afflicted veterans. It was also to advise and make recommendations to the Chief Medical Director as to a variety of aspects of the PTSD problem. The Administrator was directed to report periodically to Congress with respect to the implementation of Section 110 generally, and specifically with regard to the findings and recommendations of the Special Committee.[74] Both reporting provisions relied on the Administrator to be the conduit of the information required by the Committees. The proposed legislation reflects some unease with the quality and timeliness of the information as it has been filtered through the Administrator to the Committees.

In the face of this case law and statutory precedent, the efficacy of a claim of violation of the separation of powers doctrine as a result of S.13 and S.947's reporting requirements is problematic. As has already been noted, in determining whether a statute disrupts the balance between the coordinate branches the Court first asks whether the action of the challenged branch threatens to prevent another "from accomplishing its constitutionally assigned function," and second, "where there is a potential for disruption," it determines "whether that impact is justified by the overriding need to promote objectives within the constitutional power" of the moving branch.[75]

It would be difficult to argue that the reporting requirements in question here on their face aggrandize congressional power in derogation of presidential power. The Chief Executive appoints the Secretary of Veterans' Affairs and he serves at his pleasure. Thus the President maintains his ability to communicate with the Secretary and influence his views as to the appropriate conduct of the agency. Also, the legislation in no way blocks a legitimate claim of executive privilege, as that concept has been articulated in *United States v. Nixon.*[76] But the Nixon court expressly declined to opine on the outcome of a direct conflict in powers committed to each of the political branches. Certainly a generalized claim of privilege, such as appears to be the case here, would face no better reception than the similar broad claim asserted by President Nixon.

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[72] *Id.*

[73] *Supra* at note 2.

[74] See Explanatory Statement of House Bill, Senate Amendment, and Compromise Agreement, 130 Cong. S 12896 (daily ed. Oct. 3, 1984), *reprinted in* U.S. Code and Cong. & Adm News, 98th Cong. 2d Sess. 4415-18 (1984).

[75] *Nixon v. Administrator of General Services, supra,* 433 U.S. 425, 441, 443 (1977) citing *United States v. Nixon,* 418 U.S. 683, 711-12 (1974); accord *Mistretta v. United States,* 109 S.Ct. 647 (1989); *Morrison v. Olson,* 108 S.Ct. 2597, 2616, 2621 (1988); *Commodity Futures Trading Commission v. Schor,* 478 U.S. 833, 851-52 (1986).

Moreover, the potential for disruption of the President's ability to perform his constitutional function is not apparent on the face of the instant proposal. It must be argued that the particular type of presidential communication and control argued for here -- an absolute veto power over the transmission to Congress of both sensitive and non-sensitive documents or information -- is so central to the President's ability to "take care" that the laws are being faithfully executed that he must have final say whether they are to be used or not. That argument, however, as has been noted, was severely undercut by the *Morrison* case. The Court found that the President's duty under the "take care" clause requires no more than that he have "sufficient" control over the functioning of the independent Counsel to assure that she is carrying out her statutory duties. In that case, the President's ability, through the Attorney General, to remove an independent counsel "for cause" was deemed "sufficient" to ensure that he could perform his constitutional function. The *Morrison* decision would therefore seem to lend strong support to those court rulings which have precluded executive interference with the exercise of discretionary duties vested by Congress in subordinate executive branch officials.[77] Even where, as is not the case here, the potential that some situation might arise where highly sensitive material may be implicated, it is likely that a court will, at least in the first instance, allow for an accommodation to be reached.[78] It is not likely that a court would hold provisions such as are involved here unconstitutional on their face. Rather, in light of the precedents and factors just reviewed, it would seem likely that a court reviewing the question would find that the very limited potential for disruption of executive functioning is justified and necessary to support Congress' legislative design with respect to oversight of administration Veteran's Affairs programs and is sufficiently constrained by institutional safeguards that it does not create a significant impediment to the President's execution of the law.

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[76] 418 U.S. 683 (1974).

[77] See, *e.g.*, *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 166 (1803). *Kendal v. U.S. ex rel Stokes,* 37 U.S. (12 Pet.) 524, 610 (1838); *Ameron Inc. v. U.S. Corps of Engineers,* 809 F.2d 979 (3d Cir. 1986), *cert. dismissed,* 109 S.Ct. 297 (1989); *Lear Siegler, Inc. v. Lehman,* 842 F.2d 1102 (9th Cir. 1988), *rev'd en banc* on issue of award of attorneys fees, July 17, 1989; *Public Citizen v. Burke,* 655 F.Supp. 318 (D.D.C. 1987), aff'd, 843 F.2d 1473 (D.C. Cir. 1988); *Gilchrist v. Collector of Customs,* 10 F. Cases 355, 356, 363 (C.C.D.S.C. 1808) (No. 5,420).

[78] *United States v. A.T. & T.,* 551 F.2d 384 (D.C. Cir. 1976) and 567 F.2d 1212 (D.C. Cir. 1977).

Finally, DOJ's reliance on the constitutional direction to the President to recommend legislative measures as a source of power over the administrative bureaucracy is misplaced. Article II, section 3 directs that the President "shall from time to time ... recommend to [Congress] consideration of such measures as he shall judge necessary and expedient." This recommendatory duty would not appear circumscribed by the proposed bills.

As has been noted, Article II has been seen as clearly anticipating the creation of an administrative bureaucracy by its mention of "Heads of Departments," and the necessary and proper clause of Article I makes it certain that it would be Congress alone that would do the creating. In this scheme, Congress can assign an executive official any executive power not textually reserved to the President in Article II. Moreover, the "take care" clause has not been read by the courts to vest absolute power in the President over Heads of Departments and other subordinate officials. That clause has been held to say only that the President "shall take care that the laws be faithfully executed," regardless of who executes them, a duty quite different from the claim of a single-handed responsibility for executing all laws. A literal reading of the "take care" clause confirms the President's duty to ensure that officials obey Congress instructions; it does not create a presidential power so great that it can be used to frustrate congressional intention. In the words of the Supreme Court, where a valid duty is imposed upon an executive official by Congress, "the duty and responsibility grow out of and are subject to the control of the law, and not the direction of the President."[79] In the past, similar claims of broad substantive authority deriving from the "take care" clause have been consistently rejected by the courts.[80] More recently, the Court of Appeals for the Ninth Circuit, in condemning reliance on the "take care" clause as a justification for ignoring the mandate of an act of Congress, stated: "To construe this duty to faithfully execute the laws as implying the power to forbid their execution perverts the clear language of the 'take care' clause."[81]

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[79] *Kendall v. United States ex rel Stokes*, 37 U.S. (12 Pet.) 524, 610 (1838).

[80] See, *e.g.*, *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952); *In re Theodore Olson*, 818 F.2d 34 (D.C. Cir. 1987); *National Treasure Employees Union v. Nixon*, 492 F.2d 587, 604 (D.C. Cir. 1974); *Guadamuz v. Ash*, 386 F. Supp. 1233, 1247 (D.D.C. 1973).

[81] *Lear Siegler, Inc. v. Lehman*, 842 F.2d 1102, 1124 (9th Cir. 1988), rev'd on rehearing *en banc* solely on attorneys fees issue, July 17, 1989.

The Article II duty to recommend, as with the duty to take care that the laws be faithfully executed which appears in the same clause, is not a source of substantive presidential power, and its claim here is novel and is without any case law support whatsoever. In any event, the President's hands are not tied in this matter. As has been indicated, the President maintains his control over the Secretary of Veteran's Affairs and can substantially influence the Secretary's comments and recommendations with respect to the reports required to be transmitted. In addition, the President retains his ability to recommend any alternative "measures as he shall judge necessary and expedient."

In sum, then, it is concluded that the challenged reporting provisions of S.13 and S.947 are likely to withstand constitutional scrutiny by a reviewing court.

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August 30, 1989

The Special Committee has an important function in assessing VA activities pertaining to PTSD, identifying areas for improvement, and recommending solutions, and this provision would enable the Special Committee to continue to perform that function.

Cost: CBO estimates that enactment of section 206 would entail no significant costs.

Study of and Research on Department of Veterans Affairs Outreach Services and Health-Care Services for Certain Vietnam Veterans Suffering From Post-Traumatic Stress Disorder

Section 206 of the Committee bill, which is derived from S. 192 which in turn is almost identical to S. 2521 and section 603 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would require the National Center on PTSD to provide for a study of the extent to which, and the degree of effectiveness with which, VA reaches out to, and furnishes treatment to, minority-group Vietnam veterans who are Asian Americans, Native Americans, other Native-American Pacific Islanders, Alaska Natives, black or Hispanic Americans, and who suffer from PTSD or other psychological problems in adjusting to civilian life.

Background

Since the end of the Vietnam era, significant debate has focused on the nature and extent of the psychological problems faced by Vietnam veterans as they returned to civilian life. Although there has been a general consensus that some Vietnam veterans suffer from PTSD and other psychological problems in readjusting to civilian life, until recently there has been no precise national estimate of the number of Vietnam veterans experiencing such problems. In order to address this issue, section 102 of Public Law 98–160, enacted in 1984, mandated VA to conduct a "study of the prevalence and incidence of post-traumatic stress disorder and other psychological problems in readjusting to civilian life" among Vietnam veterans. The study was to be of sufficient size, scope, complexity, and design to provide the national estimates of Vietnam veterans' mental-health status, with special emphasis on the prevalence of PTSD and other post-war psychological probelms in readjusting to civilian life, including the prevalence among blacks, Hispanics, and women. On September 12, 1984, VA awarded the contract to the Research Triangle Institute, Inc. (RTI).

The RTI study was completed in late 1988. VA officials claimed it to be "the most rigorous and comprehensive study to date" on PTSD and other psychological problems suffered by Vietnam veterans. The four-year study involved more than 3,000 face-to-face interviews with Vietnam-theater veterans as well as their Vietnam-era and non-veteran counterparts. The study discovered that over 15 percent of male Vietnam theater veterans currently have PTSD, and that an additional 11 percent have symptoms of PTSD. Further, the report indicated that 30 percent have had PTSD at some points in their lives—often in combination with alcohol abuse or dependence. The study also discovered that 38.3 percent of Vietnam veterans currently suffering from PTSD have never used VA or any other source for their mental-health problems.

Because the RTI sampling included women, blacks, and Hispanics in disproportionate numbers in order that large enough groups of veterans might be obtained to derive meaningful conclusions about their psychological requirements, much is now known about the incidence of PTSD among these large minority groups. For example, the study revealed that PTSD prevalence for the 7,200 Vietnam theater women veterans is approximately 8.5 percent, about half the male rate. On the other hand, it was shown that PTSD is considerably more prevalent among Hispanic and black veterans. For Hispanic veterans of Vietnam, the current prevalence rate is 27.9 percent, and for black veterans 20.6 percent—far higher than the 13.7-percent rate for white/other veterans.

However, smaller racial/ethnic populations, including Asians, Pacific Islanders, and Native Americans (including Native Hawaiians and Native Alaskans) were not oversampled. As a result, conclusive findings about their problems and needs are not available, although the evidence from the RTI study demonstrating that PTSD among blacks and Hispanics is much higher than among whites is suggestive as to these smaller minority groups as well. The discussion of section 601 of the Committee bill, below, describes more fully the lack of significant data on veterans of certain racial/ethnic minority groups.

The lack of useful data about the prevalence of PTSD among or the psychological characteristics of, Asian, Pacific-Islander, and Native-American Vietnam veterans may hinder their full readjustment. The VA Advisory Committee on Native-American Veterans as well as some clinical studies have suggested that significant readjustment problems exist among veterans from these racial/ethnic populations and that cultural and other factors complicate access to services, which can impede both diagnosis and treatment. Preliminary research, some of the results of which were reported to the Committee by Dr. Roger Hamada, clinical psychologist at VA's Stress Disorders Research Laboratory at the VA Outpatient Clinic in Honolulu, Hawaii, at the July 14, 1988, Committee hearing on PTSD, indicates that veterans from these particular groups may have wartime experiences and reactions that are qualitatively different from those of white or black Vietnam veterans, and may require the development of unique outreach and treatment regimes to meet their needs.

Last year, the Committee attempted to address the lack of hard data on these minorities by including in S. 2011 as reported, the proposed "Veterans' Compensation Cost-of-Living Adjustment Act of 1988", a provision based on S. 2521, a bill that would have required the VA to conduct a supplemental study to the RTI Study focusing on these minorities. The provision was accepted by the Senate but was not accepted in the final bill.

Committee bill

The Committee believes that the possible culturally-based reluctance to seek treatment among veterans of racial/ethnic minorities, the unique manifestation of readjustment problems resulting from their wartime experiences, and the reported higher percentage of PTSD among certain racial/ethnic groups already studied support the need to determine the extent to which PTSD and postwar psychological problems among the groups not oversampled in the RTI study are not being reached by VA.

Accordingly, section 206 would require the National Center on Post-Traumatic Stress disorder, established by section 110(c) of Public Law 98–528, the Veterans Health Care Act of 1984, to provide for a study of the extent to which, and the degree of effectiveness with which, VA carries out outreach, and furnishes treatment, to minority-group Vietnam veterans, with a special focus intended to be placed on Asian Americans, Native Americans, other Native-American Pacific Islanders, and Alaska Natives who suffer from PTSD or other psychological problems in adjusting to civilian life. The Committee bill also would require the National Center by October 1, 1991, to submit to the Secretary of Veterans Affairs and the Committees of Veterans' Affairs a report containing the results of the study, as well as the Center's findings and recommendations on the most effective methods for providing outreach to, and treatment of, such veterans. The Secretary would then be required to submit to the Committees comments on the Center's report within 60 days.

The Committee believes that it would be appropriate for the National Center to evaluate barriers to seeking mental-health treatment among minority veterans; and evaluate the appropriateness of mental-health treatment techniques that are traditionally used to assist these racial/ethnic groups.

Finally, the Committee notes that section 206 differs from previous analogous legislative proposals in that, rather than paralleling the RTI study methodology, the focus of study as to PTSD and other psychological problems among minority veterans would be on the effectiveness of outreach to and treatment of these veterans and be carried out in a clinical research setting. The Committee believes that this approach would more effectively use available resources and combine research goals with actual treatment of minority veterans experiencing psychological readjustment problems.

Cost: CBO, estimates that enactment of section 206 would entail no significant costs.

Funding for Post-Traumatic Stress Disorder Programs

Section 207 of the Committee bill, which is derived from section 204 of S. 13, would require VA to specify in its fiscal year 1991 and 1992 budget documents the type and amount of resources that are proposed to be spent in the upcoming fiscal year on PTSD-related activities.

Section 207 would require VA, when submitting its annual budget documents for fiscal years 1991 and 1992, to identify the amounts to be obligated in the upcoming fiscal year for (1) payment of compensation to veterans for disabailities resulting from service-connected PTSD; (2) the treatment of veterans for PTSD related to their combat-area and non-combat-area service, including specific designation of funds inpatient care—specialized programs, general programs, and treatment terms—outpatient care, Vet Centers, and contract care; (3) PTSD education, training, and research (at the

National Center on PTSD and at any Mental Illness Research, Education, and Clinical Centers [MIRECCs] that may be established under section 207 of the Committee bill, and generally); and (4) the operation of the National Center on PTSD. It is the Committee's intention that the Secretary should include in the report the assumptions on which the estimates are based as well as such historical data as are available for the preceeding several fiscal years.

Section 204 of S. 13 as introduced would have made the reporting requirement permanent whereas the Committee bill requires the specification of PTSD funds in budget documents for two years. The Committee will assess the value of the required reports and make a judgment on the need to continue the requirement beyond the two years.

Cost: CBO estimates that enactment of section 207 would entail no significant costs.

Part B—General Health

Services to Overcome Service-Connected Disabilities Affecting Procreation

Section 211 of the Committee bill, which is similar to the provisions of section 211 of S. 13 as introduced, which in turn is similar to the provisions of section 301 of S. 9 as reported by the Committee and as passed by the Senate on December 4, 1987, in H.R. 2616, would amend section 601(6) of title 38 to (1) require VA to furnish services to a service-connected-disabled veteran or the spouse of such a veteran to achieve pregnancy in cases in which the veteran's service-connected disability impairs procreative ability; (2) establish an interdisciplinary task force to advise the Chief Medical Director on the implementation of this provision; and (3) require VA to furnish these services on a fee-care basis only.

Background

Section 211 of S. 13 as introduced was derived from and is identical to both section 205 of S. 2422 and section 301 of S. 9, which the Senate passed in section 205 of H.R. 5299 on September 30, 1986, and in section 301 of H.R. 2616, on December 4, 1987, respectively. Unfortunately, the House did not agree to these provisions and they were not included in the measures which were ultimately enacted.

VA has maintained that it does not have the authority to furnish those medical services which would help achieve pregnancy for service-connected veterans whose disabilities impair the ability to have children. This VA position came to light in the case of a woman who, while serving the U.S. Air Force, developed pelvic inflammatory disease, which was misdiagnosed. The disease progressed, scarred her fallopian tubes, and left her sterile. Although she tried to convince VA to pay for in vitro fertilization (IVF) (a procedure whereby eggs are removed from a woman's ovary, fertilized in a test tube and the resulting embryos implanted into the uterus—which is the only procedure that offered her the possibility of having a child) VA chose to interpret its statutory authority very narrowly and refused to provide the procedure, claiming that it lacked the authority to furnish such services. As a result of this position, veterans who because of a service-connected disability are unable to have children are being denied access to services through VA which would enable them to reproduce and have a family.

According to a May 1988 Office of Technology Assessment report entitled "Infertility: Medical and Social Choices", only about 16,000 male veterans under the age of 55 have service-connected disablities that could cause infertility and only about 1,300 female veterans have similar service-connected disabilities that could prevent them from becoming pregnant. Only a fraction of those individuals would desire or could benefit from the availability of procreative services. The majority of those veterans with infertility problems desiring such services would likely be treated with conventional medical therapies, including drug or hormone treatments, or surgery, to enable pregnancy to be achieved through sexual intercourse. Veterans with spinal cord injuries would be helped to a large degree by the availability of artificial insemination. More complicated technologies, such as gamete intra-fallopian transfer (GIFT) (a procedure where eggs are removed from a woman's ovary, mixed with sperm and immediately returned via surgery to the fallopian tube to fertilize in a natural environment) and IVF—which is generally used only as a last resort to correct reproductive problems for which nothing else works—might be used if necessary. Although IVF and newer technologies may help as many as 10–15 percent of infertile couples, few utilize them. For example, in 1986, less than 1 percent of the infertile couples in the United States attempted IVF.

In both 1986 and 1987, when hearings were held on legislation identical to section 211 of S. 13, the provisions were supported by all the major veterans organizations. When, on April 13, 1988, this measure was discussed at the conference between the House and Senate Veterans' Affairs Committee, House conferees sought to exclude certain specific medical procedures from this provision and were particularly adamant in insisting that IVF be excluded. The Senate conferees would not accept that result.

At the Committee's May 18, 1989, hearing, VA stated that its opposition to the provision resulted "from our inability to adequately answer many very difficult and troublesome questions regarding the furnishing of such services." Among the issues raised by VA were VA's responsibility to furnish services to those likely to produce a severely retarded child or who have a history of abusive behavior, the number of times VA should provide services if the couple fails to conceive, and the number of successful procedures to which a veteran would be entitled. Several veterans service organizations, while supporting the S. 13 provision, raised similar questions. For example, the Disabled American Veterans questioned VA's ability to provide such reproductive services directly. In response to questions sent to witnesses asking them to respond to VA's concerns, the Paralyzed Veterans of America suggested that an advisory committee be established to (1) draft and recommend guidelines, criteria, and standards to the Chief Medical Director, (2) regularly review medical practice in this area for the purpose of updating such guidelines, and (3) serve in an advisory capacity to the Chief Medical Director as a peer review panel for individual veteran cases.

Committee bill

Section 211 of the Committee bill would require VA to furnish services to a service-connected-disabled veteran or the spouse of such a veteran to achieve pregnancy in cases in which the veteran's service-connected disability impairs procreative ability. In response to testimony at the Committee's May 18, 1989, hearing and to clarify VA's responsibility in the area of procreative services, this provision would also establish an interdisciplinary task force to advise the Chief Medical Director on the implementation of this provision and require VA to furnish these services on a fee-care basis only.

The Committee notes that reproductive technologies are rapidly evolving and that to set into law a determination that only certain procedures are allowed could send a message to the medical community, State public-policymakers, and the general public that those medical procedures are better or more acceptable than others when in fact no such medical or scientific determination has been made and there is no medical basis for such judgments. Additionally, if the committee chose to authorize only specific technologies, it would seem to imply that there is no VA authority to provide other, equally valid, fertility services which might be developed at a later time.

With specific regard to IVF, the Committee believes that any exclusion of IVF would be discriminatory toward women veterans. Although the majority of infertility problems for male veterans would be addressed through the availability of more conventional medical and surgical procedures as well as artificial insemination, those female veterans for whom no other procedure will work—including GIFT (GIFT cannot be used in cases of blocked fallopian tubes, which affect approximately 30 percent of women with infertility problems)—would still be denied the opportunity to have children.

As more and more women join the Armed Forces, women will constitute an ever greater proportion of veterans. The Committee believes that women veterans must be provided equal access to health-care services.

The Committee notes that the Committee bill would in on way require any veteran or spouse to undergo IVF or any health-case professional to participate in performing such a procedure.

Cost: According to CBO, the enactment of section 211 would entail estimated costs of $1 million in both budget authority and outlays in FY 1990 and total estimated costs of $7 million in both budget authority and outlays in FYs 1990–1994.

Compensated Work Therapy and Therapeutic Residence Pilot Program

Section 212 of the Committee bill, which is derived from Amendment No. 124 to S. 13 and S. 846, would (1) authorize VA compensated work therapy (CTW) programs to contract with any private or governmental entities, including VA; (2) authorize Special

Therapeutic and Rehabilitation Activities Fund (STRAF) funds to be used for defraying the costs of travel and related expenses necessary to train and educate employees to administer services related to the CWT program under section 618(b) of title 38; and (3) add a new section 618A to title 38 which would require VA to conduct a 5-year pilot program involving the use of therapeutic residences (TRs) in conjunction with CWT programs at twenty-five sites—at not fewer than ten nor more than fifteen of which VA would contract with non-profit corporations to operate the TRs in conjunction with CWT programs, and at not fewer than ten nor more than fifteen of which VA would operate TRs directly.

Background

VA CWT programs provide, at a low cost to the government, numerous therapeutic benefits to VA patients in a work setting. CWT programs involve the use of work subcontracted to and paid for by businesses with wages generated through the work contracts and generally paid on a piece-work basis. The jobs vary greatly, from simple packaging to fabrications and assembly operation using complex machinery, and take place in VA medical centers, in the community, or on industrial sites. Not only do these programs provide a clinical procedure for evaluating a patient's vocational interests, aptitudes, and skills, but they also provide a method for assessing a patient's physical and mental capacities for work in actual work situations. CWT programs also encourage the development of good work habits, by emphasizing attendance, reliability, punctuality, productivity, craftsmanship, and personal responsibility. In essence, individuals working in CWT programs gain a sense of being productive while developing important work skills.

In fiscal year 1988, CWT programs provided work for 5,632 veterans in 45 programs, through contracts with businesses paying out over $3 million. Patients worked 836,438 hours and were paid a total of $1,879,602. Of those working in the program, approximately 40 percent were outpatients, and almost all (approximately 90 percent) were either psychiatric or substance-abuse patients.

In 1976, section 105 of Public Law 94–581, initiated by the Committee, revised section 618 of title 38 to clarify VA's authority to carry out the CWT programs that had existed in some form in VA since the late 1930's—including the use of non-profit corporations until 1973 VA's General Counsel opined that such non-profit corporations violated a government-wide prohibition on corporations doing government business—and had been carried out as part of general VA medical-care authority under chapter 17 and VA's general contract authority under section 213 of title 38. Public Law 94–581 expressly authorized VA to enter into contracts with non-VA entities for the provision of CWT programs, thereby eliminating the immediate need for non-profit corporations. Recognizing, however, that many of the then-existing non-profit corporations were doing a good job, that law authorized VA to contract with existing non-profit corporations, to procure and administer CWT contrats. It did not, however, exempt VA from the operation of the Government Corporation Control Act (section 9102 of title 31, United States Code), which continues to prohibit government agencies from forming corporations to do government business. In 1976, approximately 2000 patients were engaged in CWT programs at 52 VA health-care facilities.

Subsequently, in 1978, VA adopted an interpretation of the need-based, non-service-connected VA pension program (carried out pursuant to chapter 15 of title 38) under which a CWT patient's pension was reduced dollar-for-dollar by the amount earned in CWT programs. To eliminate that interpretation's adverse effect on participation in the program, a provision was initiated by the Committee in 1984 and eventually enacted in section 601 of Public Law 99-576 in 1986, to bring about, in effect, an exemption of CWT payments from countable income under the pension program.

In 1988, legislation was enacted in section 411 of Public Law 100-322, to return to the STRAF—the revolving fund that CWT contract money are paid into and participant salaries paid out of—the $100,000 which, under a surprising interpretation of the Gramm-Rudman-Hollings (GRH) law (Public Law 99-177), had been taken from the STRAF as a part of the fiscal year GRH 1986 sequestration. Earlier, in section 601 of Pubic Law 99-576, enacted on October 28, 1986, Congress had permanently exempted the STRAF from sequestration in any fiscal year after FY 1986.

Last year, the Committee learned from various sources that further expansion of the CWT programs was being hampered by restrictions on types of contractors and a lack of funding for training, travel, and other necessary management operations and that a linking of VA's CWT efforts to therapeutic residences might be very desirable. Therapeutic residences (TRs) are an important phase of treatment for many who have undergone treatment for mental health problems on an inpatient basis. At the June 14, 1989, Committee hearing, Dr. Spencer Falcon, immediate past President of the National Association of VA Chiefs of Psychiatry and Chief of Psychiatry at the Ann Arbor, Michigan, VAMC and a member of the VA's Special Committee on Post-Traumatic Stress Disorder, commented on the function of TRs, and the need for them:

> As opposed to those out of work, burned out of their homes, etc., the severely and chronically mentally ill cannot resume their full personal, familial, social, vocational and community lives following treatment of their acute phase of illness. They must also slowly recuperate from their illnesses—often progressing from acute inpatient units to chronic state hospitals to rehabilitation programs to day hospitals or half-way houses to group or foster home to independent living—in a slow but progressive manner. Thus, they need a range of housing opportunities that includes more "restrictive" and larger sized facilities, smaller group and family homes, and eventually, individual homes or apartments.
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> We believe that homeless veterans would benefit substantially from the development of a new program of therapeutic housing on a transitional basis which would be coordinated with the current CWT program.

Therapeutic residences provide an environment in which long-term psychiatrically-impaired veterans learn or re-learn many skills that help them achieve higher levels of independence and productivity. Patients who live in TRs are provided support and encouragement to take responsibility for their own personal daily needs such as personal hygiene and appearance, management of their finances, cooking, cleaning, shopping, and keeping to a schedule. In addition, patients interact with their housemates and participate in group chores such as yardwork, and in doing so, develop social skills that enable them to function better with others in the outside community. The TR is a structured and stable setting, clean from illegal drugs and alcohol. It offers a supervised, independent living situation that assists persons in their efforts to reenter their communities. The therapy that is provided at a TR complements that which is provided in the work environment of a CWT.

Committee bill

The Committee bill contains provisions derived from Amendment No. 124 to section 212 of S. 13 as introduced, and from S. 846, that would both seek to address current problems in CWT programs and provide for linkage of CWT programs with TRs.

Enhancement of existing CWT authorities

On the first point, subsection (a) of section 212 of the Committee bill would modify the existing CWT authority in section 618(b) so as to allow CWT programs to contract with government entities, including VA, as well as with the private industry sources specified in current law, for the work that the patients do. Subsection (b) of the Committee bill would allow funds from the STRAF to be used for training and (as proposed in S. 846) education and related management functions, including travel, necessary for the operation of the CWT programs. The Committee believes that these provisions would allow existing CWT programs to expand and operate more effectively and would also encourage the establishment of new CWT programs.

Pilot program

Under subsection (c) of section 212 of the Committee bill, VA would be required to conduct a 5-year CWT and therapeutic residence pilot program limited to not more than 25 VA general health care facilities. At no fewer than 10 nor more than 15 of these sites, VA would be required to promote and participate in the establishment of non-profit corporations with which VA would contract to run CWT programs as long as the non-profit has made a commitment to, and actually runs, a TR; and at no fewer than 10 nor more than 15 of the sites, VA would be require to acquire and operate directly TRs for veterans participating in VA CWT programs. The Committee intends that veterans who are chronically mentally ill or have substance-abuse problems, including those who are homeless, would be a major focus of this program. The Committee believes that clinicians, in selecting participants for program, should consider all of the individual circumstances of veterans. The Committee does not view this program as one directed as homelessness specifically, but recognizes that homeless veterans who would benefit from the therapeutic aspects of the independent living situation would be among the program participants.

Non-Profit TRs: At the sites where the non-profit corporation model is used, VA would help to create non-profit corporations with which it would contract to conduct CWT programs—structured job opportunities arranged under contracts with private businesses—and to which it could make loans to facilitate the non-profit in setting up TRs providing relatively independent group-living arrangements. In order to be eligible to receive a CWT contract under this program, the corporation would be required to run a TR. These CWT/TR programs would provide work therapy during the day and a supervised living experience at night.

More specifically, the Committee envisions the non-profit model working as follows: Once VA employees perceive—or are able to develop and nurture—an interest in the community in providing transitional housing and appropriate therapeutic work opportunities for chronically mentally-ill veteran patients or veteran patients with substance-abuse problems, they would join with the interested community individuals—very likely some of whom would be members of veterans' service organizations—to form a non-profit corporation. VA employees could constitute only a minority of the board members. The goal of this non-profit corporation would be to run a CWT program for veterans in conjunction with establishing and running a TR. The responsibility for the project would be with the non-profit corporation; VA would be supportive in tangible and promotional ways, described below.

To assist the non-profit corporation to fund the project initially, including the purchasing of housing where VA-foreclosed housing is not available, VA would be authorized to make loans, payable on demand, to the non-profit in the amounts of (1) either 25 percent of the purchase price or the total of one year's rent in the case of property to be leased, and (2) the estimated cost of operating the TR for 6 months. Such loans would not bear interest for the first 5 years, and thereafter would bear a rate of interest specified by the Secretary, in consultation with the Secretary of the Treasury. VA would be authorized to use unobligated funds in the STRAF for the loans.

Money to be loaned to the non-profit would be deposited in a special escrow account in the STRAF for up to 18 months. Before the money could be released from the escrow account to the non-profit corporation, the corporation would be required to demonstrate to the VA facility that it has sufficient non-VA funding, in either cash or in in-kind services, to cover 25 percent of its annual operating expenses for running the TR—over and above the expenses anticipated to be paid by VA patients in rental payments. The Committee believes that this loan for part of the purchase price of the residence would ease the start-up burden for the non-profit corporation and inspire confidence from other potential private funding sources.

In order to assist non-profit corporations to acquire housing in another fashion, the Committee bill would direct the Secretary to transfer to VHS&RA not less than 10 properties acquired under the loan guaranty program upon a veteran's default and located in suitable areas—that is, areas in which VA has contracted or intends to contract with a non-profit to provide a CWT program in conjunction with a TR. VHS&RA would then lease these properties to non-profits to be utilized as TRs for terms of one to three years, with renewal options. The non-profit would be required to hold in escrow 60 percent of the rent collected from patients at the TR to be paid to VA for deposit in the LGRF (or, as appropriate the Home Loan Guaranty Fund that would be established by section 401 of the Committee bill) at the end of the lease period. The Committee expects that the Secretary, in determining the reasonable amount of rent that participants in the TRs would pay, would take into consideration rental costs in the communities in which the TRs are located. Upon termination of the lease, the property would be returned to the Secretary to be disposed of under loan program procedures.

The Committee expects that the Secretary, in determining which properties to transfer to VHS&RA, would consider his responsibility to the LGRF as well as to the CWT programs. In addition, when properties are transferred from the loan guaranty program to VHS&RA, it is the intent of the Committee that VHS&RA would accede to all of the rights and all of the responsibilities of ownership of such properties.

VA would also be authorized to furnish to the non-profit (with or without compensation) in-kind services under the CWT contract. These services will likely be essential to ensure that the non-profit had the clinical expertise necessary to run both the CWT program and the therapeutic aspect of the residence. Additionally, VA would be authorized to utilize its personnel to carry out minor maintenance and repair to the TR. The use of VA facilities by a non-profit for purposes of carrying out the CWT program is not intended to be considered such in-kind service; rather, the location of the work would be specified in the contractual agreement and could be in a VA or a non-VA location.

The Committee notes the precedent for this program at the Menlo Park Division of the Palo Alto VA Medical Center. There, Chief of Staff Dr. Mark Graeber has been working for many years with a non-profit corporation which currently runs several TRs. Through the work of the non-profit, and the contributions of in-kind services from VA staff, over 400 veterans have been helped since 1968. It is this kind of success that the Committee hopes this pilot program would engender, and the Committee encourages those who undertake programs pursuant to this pilot program to utilize the Menlo Park staff as a resource for advice and information.

VA-perated TRs: Under the pilot program, VA would be required, at not less than ten nor more than fifteen VA medical centers, to operate TRs for veterans who are participating in VA's CWT program.

In order to carry out this section, the bill authorize the Secretary to use STRAF funds to purchase, lease, or otherwise acquire houses to be used as therapeutic residences only for veteran patients participating in a VA CWT program. When acquiring such housing, the Secretary would be authorized to use such procurement procedures as the Secretary deems appropriate to expedite the opening and operation of such TRs while protecting the interests of the United States.

Currently, the Secretary may acquire a home through foreclosure under chapter 37 of title 38. It is envisioned that the Secretary would transfer monies from the STRAF to VA's Loan Guaranty Revolving Fund in an amount equal to the sale price of the home. In determining the sale price, the Secretary would be required to treat the property as if it were to be used as a homeless shelter under section 9 of Public Law 100-198. Once the transfer occurred, the Chief Medical Director would be responsible for the management, maintenance, and disposition of the property.

Under the Committee bill, if the house owned by the STRAF were later not needed or able to be used for the TR purpose, VA would be authorized to sell the house with proceeds going into the STRAF.

The Committee bill also would provide specific conditions which VA would be required to meet in order to operate such TRs. These conditions include: (1) that only veterans in the CWT program and a house manager be permitted to reside in the house; (2) that each resident, other than the house manager, be required to pay rent; (3) that the Secretary consult with appropriate community representatives and comply with zoning, building, and other requirements associated with the operation of such housing; and (4) that each residence meet the State and community fire and safety requirements applicable to other such property in that community.

Community involvement is vital to the success of this program. Therefore, it is intended that VA should seek the cooperation of the community from the beginning.

The Secretary would be authorized under the Committee bill to provide free room and subsistence for the house manager in lieu of of in addition to a salary. However, the value of the total amount equal to the minimum wage requirements of the Fair Labor Standards Act.

Additionally, the Secretary would be required to prescribe a procedure to determine the rental rates and the time limitations applicable to a veteran's residing in a TR.

In order to help fund the purchase or lease of homes to implement the pilot program, the Committee bill would authorize the Secretary to establish nonprofit corporations solely to provide a flexible funding mechanism for the conduct of VA CWT programs. This provision is designed in a manner similar to that provided by Public Law 100-322 for the establishment of nonprofit research corporations. Specifically, the nonprofit corporation would have the authority to accept gifts and grants which would be transferred to the STRAF account, thereby enabling VA to purchase homes and administer the CWT/TR program.

Overall supervision of the corporation would be through a Board of Directors which would be required to consist of VA and community representatives who would have serve as liaisons with the community, VA, and nonprofit corporation. The Secretary would be required to submit to the Congressional Committees on Veterans' Affairs an annual report on the number and location of corporations established and the amount of contributions made to each corporation.

The Committee bill would authorize the appropriation to the STRAF for the purposes of carrying out this pilot program, a total of $5 million for fiscal years 1990 through 1994. To the extent that less than $5 million is appropriated for this purpose, the Secretary would be authorized to transfer to the STRAF from unobligated amounts in the General Post Funds of the VA medical facilities which host CWT/TR programs such amounts as the Secretary determines would be necessary to carry out the pilot program.

Cost: CBO estimates that enactment of section 212 would entail estimated costs of $5 million in budget authority and $1 million in outlays in FY 1990 and total estimated costs of $5 million in budget authority and $5 million in outlays in FYs 1990–1994.

Pilot Program: Noninstitutional Care Alternatives to Nursing Home Care

Section 213 of the Committee bill, which is similar to the provisions of section 7 of S. 574, would amend subchapter II of chapter 17 of title 38 to add a new section 620C to require the Secretary, beginning on October 1, 1989, to conduct a 4-year pilot program to evaluate noninstitutional alternatives to institutional care.

Background

S. 574 was derived from section 306 of S. 9 as reported by the Committee and passed by the Senate on December 4, 1987, in H.R. 2616, section 204 of S. 2422 as reported by the Committee and passed by the Senate on September 30, 1986, in H.R. 5299, and S. 876 as reported by the Committee and passed by the Senate on July 30, 1985, in H.R. 505. Unfortunately, the House did not agree to these provisions and they were not included in the measures which were ultimately enacted.

Further background information regarding the approach proposed in this section of the Committee bill is provided in the Committee's reports on S. 9 (S. Rept. 100–215, pages 117–120), on S. 2422 (S. Rept. 99–444, pages 45–48), and on S. 876 (S. Rept. 99–101, pages 37–42).

Committee bill

The Committee is again acting on this provision because it remains convinced that, in light of current developments in health-care services which enable more individuals to receive needed care without being institutionalized and of the rapid increase in the number of veterans age 65 and older who may be seeking care from VA in the years ahead, VA must take steps to develop new approaches to addressing the health-care needs of veteran patients. The kinds of new VA approaches this legislation envisions must include an emphasis on increased interaction with community entities that provide health and health-related services if VA is to get the maximum health-care benefits out of every dollar spent. There also must be a greater emphasis on reducing the need for institutional care for veterans.

Under the Committee bill, the Secretary would be required to conduct a four-year pilot program through which VA would provide certain veterans with medical, rehabilitative, and other health services and, by contract with non-VA entities, with health-related services.

These health and health-related services would be provided under VA contracts in noninstitutional settings—such as the veteran's home or a personal-care or board-and-care home—with the goal of being able to avoid institutional care, such as in a hospital, nursing home, or domiciliary facility, for the participants in the program.

The bills previously passed by the Senate provided for broader categories of eligibility for this program. This year's bill would limit eligibility to those veterans eligible for and otherwise in need of nursing home care primarily for the treatment of a service-connected disability or veterans who have service-connected disabilities rated at 50 percent or more and are being treated for any disability.

Under the Committee bill, the Secretary would be required to appoint a VA employee to furnish case-management services (including screening, assessment of needs, referral, planning and monitoring) to each veteran participating in the pilot program. The Secretary would also be authorized to provide in-kind assistance to a facility or organization furnishing health-related services under this program.

On the issue of increased VA-community interaction and cooperation, the Committee is convinced that VA must make greater use of community resources which help to maintain individuals in their homes—such as homemaker, personal-care, communal or at-home nutrition, and transportation-assistance services—in order for the Department to respond in a reasonably adequate way to the growing demand for care that it is facing and will continue to face as the veteran population generally ages rapidly between now and the end of the century.

With reference to the cost of this pilot program, the bill would limit the cost to not more than 65 percent of the total cost that would otherwise have been incurred by VA if the veterans participating in the program had been furnished nursing home care instead of the noninstitutional services provided for under the new program. It is the Committee's intent that the pilot program be carried out through the use of funds that would otherwise be used for the provision of more costly intermediate care and that the funds saved by this pilot program be applied to care for more veterans than would otherwise be served.

Finally, the Committee bill would require that the Secretary submit, by February 1, 1993, a report on the conduct of the pilot program during its first 3 fiscal years including an evaluation, findings, and conclusions about the program.

As introduced, this provision would have (1) limited eligibility for noninstitutional care to veterans eligible for nursing home care and receiving or needing that care for the treatment of service-connected disabilities, and (2) established the program as a permanent authority rather than a pilot. For the purpose of providing noninstitutional care, the Committee believes that veterans with service-connected disabilities rated at 50 percent or more and being treated for any disability should be afforded the same services as if they were being treated for a service-connected disability. Also, in order to determine whether noninstitutional care alternatives serve the purpose for which they are designed, the Committee bill would require a pilot program until the results of a program evaluation are reviewed.

Cost: According to CBO, enactment of this provision would entail estimated costs of $4 million in both budget authority and outlays in FY 1990 and total estimated costs of $35 million in both budget authority and outlays in FYs 1990–1994.

Preventive Medicine

Section 214 of the Committee bill, which is substantively identical to S. 1306, would amend sections 663 and 664 of title 38 so as to (1) extend VA's pilot program of preventing health-care services through fiscal year 1994; (2) expand the categories of veterans to whom VA is required to furnish such services; (3) require that those veterans annually be offered a minimum of two preventive health-care services when they are otherwise receiving inpatient or outpatient care; (4) require that each VA health-care facility annually implement a major preventive health-care and health-promotion initiative for those veterans; (5) expressly provide that the scope of permissible preventive health-care services under the pilot program include certain specified services; (6) require the Secretary to submit reports on the experience under the pilot program; (7) limit expenditures under the pilot program; and (8) require that VA's Chief Medical Director (CMD) designate one official in the Veterans Health Services and Research Administration as the Director of Preventive Health and Health Promotion Programs.

Background

VA preventive health-care services were first proposed to be authorized by the Senate in 1976 as part of S. 2098. In 1977, a preventive health-care provision, originally included in S. 1693, was included in the version of H.R. 5027 reported by the Committee and passed by the Senate. In 1979, the provision in S. 7 to authorize VA to establish a preventive health-care pilot program was enacted as section 105 of Public Law 96–22.

The preventive health-care pilot program established pursuant to that law was targeted to veterans with service-connected disabilities rated at 50 percent or greater and veterans receiving VA care for the treatment of service-connected disabilities. In 1983, provisions introduced in S. 11 and enacted as section 106 of Public Law 98–160 modified this preventive health-care program to (1) require VA to provide at least one preventive health-care service to veterans previously authorized to receive preventive care while otherwise receiving VA care, and (2) authorize VA to provide preventive health-care services to all veterans otherwise being furnished care under chapter 17 of title 38. Public Law 98–160 also added preventive health-care services to the definition of medical services in section 601(6)(A)(i) of title 38.

In implementing Public Law 98–160, VA developed a list of preventive-medicine services to be used as guidance for its facilities across the Nation. This list, which is altered and updated periodically—most recently in a July 25, 1989, VA circular (10–89–76)—

now includes the following services or interventions (in priority order as determined by VA according to high benefit to cost ratios and significant numbers of veterans at risk): Hypertension screening; smoking cessation; cholesterol screening; influenza immunizations; cancer screening (colorectal, cervical, and breast); alcohol abuse counseling; nutrition/weight control counseling; physical fitness/exercise; and osteoporosis counseling. Every VA facility has a Preventive Medicine Coordinator who is responsible for monitoring the implementation of the program and who serves as the liaison for preventive medicine activities.

Each year the Preventive Medicine Field Advisory Group, a group of between 5 and 9 VA physicians who serve as a liaison between VA health-care facilities and VA Central Office, while encouraging all these preventive health-care services and interventions, recommends one preventive service to receive special systemwide emphasis. This practice of emphasizing one special preventive service per year augments the health services being provided to veterans and provides education to and increases awareness on the part of professionals and patients as well. VA expects that through these highlighted interventions there will be a greater awareness of the importance of preventive medicine in the veteran population. Beginning mid-way through fiscal year 1985 and continuing through fiscal year 1986, the special initiative was influenza immunization; in fiscal year 1987, it was colorectal cancer screening; in fiscal year 1988, it was smoking cessation; and, currently, in fiscal year 1989, it is cholesterol screening.

On August 12, 1988, VA released a final report on preventive health-care services under Public Law 98-160. According to this report, 84 facilities provided services other than those on the recommended list, and over 50 different activities were reported throughout the system. These included glaucoma screening, preventive foot care, stress management, hearing conservation, and a variety of counseling and other health-education activities. The most widespread preventive health-care measure in 1987 was hypertension screening, with over 3 million tests performed in that year. In addition, colorectal cancer screening and influenza immunization both showed increases from 1985 to 1987. Finally, the 1988 report noted increases in the number of preventive health-care services for women veterans, with over 2,000 mammograms and pap smears provided in 1987.

Although the preventive health-care services pilot program in subchapter VII of chapter 17 of title 38 expired on September 30, 1988, VA has continued to provide preventive health-care and health-promotion services pursuant to the 1983 amendment to its general health-care authority under chapter 17.

In statements submitted after the Committee's May 18 hearing, S. 1306 received general support, except from VA. VA noted the "desirability of providing veterans with preventive health-care services" but stated that it did not believe "that enactment of a statutorily prescribed preventive health-care program * * * is warranted."

Committee bill

Section 214 of the Committee bill, in addition to reestablishing the pilot program to run through fiscal year 1994, expands the category of veterans who are entitled to preventive health care to include, in addition to those with service-connected disabilities rated 50 percent or more and those receiving care for a service-connected disability, all other veterans receiving care or treatment to which they are entitled. In the case of those receiving hospital or nursing-home care, this includes all category A patients—primarily veterans who have any service-connected disability, who are ex-POWs or World War I veterans, who have disabilities that may be related to their exposure to radiation from a nuclear detonation or to an herbicide in Vietnam, or who have incomes below the category A maximum (currently $16,466 per year for a veteran with no dependents). In the case of those receiving outpatient treatment, this includes primarily those being treated for service-connected disabilities, those with service-connected disabilities rated at 50 percent or more being treated for any disability and, when receiving treatment necessary to prepare for or obviate hospitalization or to follow up on institutional care, veterans who have service-connected disabilities rated at 30 or 40 percent, and veterans with incomes not exceeding the applicable maximum rate of VA need-based pension for those needing aid and attendance (currently $10,338 for a veteran with no dependents).

In this time of serious budget constraints for VA health care and all Federal spending, the Committee believes that the foresight to see and think beyond immediate budgetary limitations must be encouraged. It is interesting that the institution from which veterans have come, the military, has long recognized the importance of preventive health-care and health-promotion services as a means to help keep our military personnel at the highest state of good health. This emphasis should be continued after their service.

The Committee is convinced of the value and cost-effectiveness of preventive health-care and health-promotion services and is concerned that funds for these services have been and will continue to be difficult to obtain. The Committee believes that if preventive health-care services are not mandated, the current budget crunch will very likely lead to cutbacks on that front which will, in the long run, cost more money, not less. Preventive health care is an investment that saves money in the long run. The Committee wants to ensure that this program continues and that it is enhanced rather than contracted.

Implementation of this measure should not become an additional burden to VA health-care practitioners. When a veteran receives VA health care for any health problem, there is very often some preventive health care involved as well, and it is standard practice for health-care professionals to ask about a patient's medical history and personal habits and to check a patient's blood pressure and other vital signs. By expanding the preventive health-care mandate, the Committee seeks to make sure all veterans who are entitled to the inpatient or outpatient care they are receiving are also furnished preventive care.

The requirement that these entitled veterans receive two services rather than one service is designed to give VA impetus to expand this program. Preventive health-care measures are easy to incorporate into examinations of patients who are otherwise receiving care; indeed, they are often, or usually should be, a part of that care already. This expansion of preventive health care seeks to improve veterans' health for little or no additional cost.

In addition to requiring VA to furnish preventive health-care services to veterans who are entitled to the care they are receiving, this legislation would leave intact the current provisions—sections 610, 612, and 601(6) of title 38—which authorize VA to furnish such services to any other veteran who is receiving VA care. Preventive health care is neither burdensome nor expensive, so under this existing discretionary authority VA would continue to be in the position of being able to provide these services whenever that is feasible and appropriate. It is often a simple matter to add preventive health-care services to the care a veteran is otherwise receiving.

This provision would also require that VA annually implement at all VA health-care facilities a major preventive health-care or health-promotion initiative for veterans entitled to preventive health care. This focused approach is designed to direct veterans' attention to a specific health issue, provide them with useful information about that issue, and screen them for related health risks or problems. Since VA currently chooses a particular program to emphasize each year, this provision would codify this valuable administrative practice.

In addition, this legislation calls for the Chief Medical Director to designate an official in VHS&RA as the Director of Preventive Health and Health Promotion Programs. This official would be charged with preparing guidance regarding and coordinating and evaluating, and advising the CMD on, preventive health-care, health-promotion, and related activities under this legislation. By establishing this position, the Committee seeks to increase the visibility and importance of, and provide a better focus on, preventive health-care and health-promotion services in VA.

This provision further would amend the definition of preventive health-care services in section 662 of title 38, which sets the scope of such services under the pilot program and title 38 generally, in order to list expressly certain services that VA is already providing: Information about stress management, smoking cessation, and physicial fitness and screening for high blood pressure, glaucoma, colorectal cancer, and cholesterol. Such services are already part of VA medical examinations or patient-health education, or have been stressed as annual nationwide initiatives.

The Committee bill would require the Secretary to submit two reports—in 1992 and 1994—on VA's preventive health-care and health-promotion activities. These reports are important for assessing the scope of these VA programs and the cost-effectiveness of preventive health care in general and should help the Congress determine the future of the program at the end of the next five-year period.

Finally, this provision would continue to limit the amount VA can spend on preventive health-care and health-promotion services under the pilot program. From the $15-million limit for fiscal year

1988, the bill would increase the cap to $16 million in fiscal year 1990, and—with a $1-million increase per year—to $20 million in fiscal year 1994. In this time of such serious budget deficits, the Committee strongly believes it is desirable to retain a cost limit when providing for expansion of such a program.

Even though there has not been a conclusive study—in VA or anywhere else—which proves conclusively the cost-effectiveness of preventive health care, and it is impossible to know with certainty exactly what health problems preventive health-care and health-promotion services deter, most medical personnel and the general population agree on the value of these activities. In this era of increased emphasis on reducing the cost of medical care and increased efforts to prevent disease and disability, the Committee believes that VA has a special responsibility—because of its size, the number of individuals it treats annually, and its significant responsibility, through active affiliations with health-care training institutions, for the training of our Nation's health-care providers—to be a leader in efforts to try to learn more about the impact, in terms of cost and improved health, of providing preventive health-care services to veterans entitled to VA care.

Cost: According to CBO, the enactment of section 214 would entail estimated costs of $16 million in budget authority and $14 million in outlays in FY 1990 and total estimated costs of $90 million in budget authority and $88 million in outlays in FYs 1990–1994. CBO notes that this estimate assumes that funds equal to the maximum annual expenditure limits stated in the bill would be appropriated for this activity.

Extension of Authority To Furnish Respite Care

Section 215 of the Committee bill, which is identical to the provisions of section 6 of S. 574, which in turn is similar to the provisions of section 611 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would extend for 2 years VA's authority to furnish respite care to certain chronically ill veterans and extend for one year the date by which the Secretary of Veterans Affairs is to submit a report on the evaluation of the program to the House and Senate Veterans' Affairs Committees. Similar provisions were contained in sections 3 and 5 of S. 748 and S. 900.

Background

VA respite care was first statutorily provided for an October 28, 1986, by section 201 of Public Law 99-576. Under the law, VA was authorized to furnish respite-care services until September 30, 1989, to veterans who are eligible to receive hospital or nursing home care under section 610 of title 38. Respite care, for this purpose, is defined as hospital or nursing home care which (1) is of limited duration; (2) is furnished in a VA facility on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home; and (3) is furnished for the purposes of helping the veteran to continue residing primarily at home. Additionally, under this provision, the Administrator of Veterans Affairs was required to conduct an evaluation of the health efficacy and cost-effectiveness of furnishing respite care, and, not later than February 1, 1989, to submit to the Senate and House Committees on Veterans' Affairs a report containing the results of that evaluation, including any plan for administrative action, and any recommendation for legislation, that the Administrator considers appropriate.

It was not until November 2, 1987, that guidance from VA Central Office was first provided to medical centers in regard to the admission guidelines and program management requirements necessary to establish a respite-care program. One month later, on December 8, 1987, instructions were distributed to all medical centers on the gathering of the data required to study, as required by Public Law 99-576, the cost-effectiveness and health efficacy of furnishing respite care.

VA policy stipulates that respite care may be provided for up to 30 days in a calendar year to eligible veterans who are suffering from a chronic illness and reside primarily at home and who are recommended for respite care by a VA treatment team. The duration of any one respite-care admission is not to exceed 14 days and the frequency of admission is not to exceed once a quarter. The policy prohibits respite care from being provided in an ambulatory care program or domiciliary bed, through a contractual agreement, or in the home. According to the policy, the veteran must be enrolled in and continue in one of the following VA programs: (1) Post-Hospital Care; (2) Adult-Day Health Care (ADHC); (3) Hospital-Based Home Care (HBHC); (4) Outpatient/Fee Basis Care; or (5) any other outpatient program where VA staff provide care.

The VA's February 6, 1989, Interim Report contained the following data: 88 VA medical centers responded to the VA's request for information in regard to patients admitted for respite care. From January 1988 through September 1988, 2,329 episodes of care were recorded. Of veterans admitted to the program, 23.3 percent were between the ages of 65 and 69, 20.7 percent were 70–74, 10.7 percent were 75–79, 6.1 percent were 80–84, and 9.7 percent were 85 and over. Eighty-two percent of admissions were "Category A" veterans, 12 percent "Category B", and 6 percent "Category C". This compares with 94 percent "Category A", 3 percent "Category B", and 3 percent "Category C" who otherwise are scheduled for or receive VA hospital, nursing home, or outpatient care. Of episodes of care provided, 78.6 percent involved married veterans and 73.0 percent lived with their spouse. In 57.3 percent of episodes, the veteran's informal support system consisted of only one person providing reliable support with adequate frequency. In 25.9 percent of the episodes, that informal support was provided by two or more people. The reported reason for the respite care being needed in 81.1 percent of the cases was that the caregiver needed a rest and in 8.8 percent of the cases that the caregiver was ill.

Additionally, the interim report described the types of care required by veterans in the respite care program. To quantify the level of assistance required by a veteran with activities of daily living (ADL)—defined as bathing, dressing, toileting, transfer, feeding, and walking—an ADL score is determined whereby zero represents little, if any, assistance being required and 6 represents the need for complete care. To date, the data collected reflect that 71.6

percent of respite care participants fall within the range of a 3 to 6 ADL score, representing a need for moderate to complete care, with 40.8 percent receiving an ADL score of 6. Other descriptive information is being collected within VA medical centers, such as level of consciousness, mental status, and behavior, and will be analyzed and evaluated as part of the report on the final study mandated by Congress.

Committee bill

Respite care is, in essence, a quality-of-life issue. Its ultimate goal is to help maintain individuals with serious chronic illnesses in their homes as long as possible before having to resort to institutional care. It is widely agreed that, where medically feasible, maintaining a person at home is better for an ill person's overall health status and is a far more efficient and cost-effective way to meet his or her health-care needs. Very often a key to a person being able to remain at home is the regular availability of a spouse, child, or other relative or close friend to provide meal, homemaker, and other personal-care services that, combined with outpatient treatment, home-health services, or other sources of medical attention, meet the individual's full range of needs.

Respite care aims to provide the primary caretaker with a break from the overwhelming responsibilities of caring for a chronically-ill loved one and thus to make the caregiver more likely to be able to provide services for a longer period of time.

The Committee believes that VA should be provided adequate time to conduct a thorough review of this important pilot program. Therefore, the Committee bill would extend for one year, to February 1, 1990, the date for submission of the final report. The Committee directs VA to include in the report the average number of days of respite care provided and the cost of furnishing such care. Because the initial data on the program indicate that it is beneficial and because the Committee believes that the services that the program provides for veterans and their families should continue while Congress considers the future of the program after receiving the evaluation report, the Committee bill would extend for two years VA's authority to provide this service.

There were two other bills which addressed this issue. Sections 3 and 5 of S. 748 would have extended both the program and the report deadlines for 2 years. S. 900 would have extended both for one year. Because of the concern that a one-year program extension would not allow enough time after the report's arrival for Congressional consideration of whether to reauthorize the program, the Committee decided to authorize a two-year extension of the program.

Cost: According to CBO, the enactment of section 215 would entail estimated costs of $7 million in budget authority and $6 million in outlays in FY 1990 and total estimated costs of $15 million in both budget authority and outlays in FYs 1990–1994.

Pilot Program for Furnishing Assistive Animals to Certain Veterans

Section 216 of the Committee bill, which is derived from section 214 of S. 13 and section 4 of S. 574, which in turn are similar to the provisions of section 615 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would require VA to conduct a 4-year pilot program under which VA would be required as to assistive monkeys, and authorized as to service dogs, to furnish to quadriplegic veterans who have service-connected disabilities rated 50 percent or more and to facilitate the furnishing of these assistive animals to other quadriplegic veterans.

Background

For veterans with high-level quadriplegia who have lost the use of their legs and much or all of the use of their hands and arms, an assistive monkey or service dog can provide much needed state-of-the-art assistance. Individuals with quadriplegia who live at home typically require 4 to 6 hours of relatively intensive human assistance per day. These individuals usually receive this care from a family member or a paid personal-care attendant. As for the rest of their day, unless they are among the few who are able to afford the great expense of attendant care for the whole day or have family members who are able to spend their days with them, quadriplegic persons simply do without. Without assistance, such tasks as picking up their mouthsticks (which they use for turning pages, dialing phones, and many other tasks) if they drop them or eating and drinking cannot be accomplished. In short, without someone to help, many of their needs go unmet.

Technical advances in the field of prostheses and adaptive mechanisms have improved the quality of life for victims of quadriplegia in recent years. Motorized wheelchairs, for example, have provided quadriplegics with some limited form of transportation. However, the extent to which quadriplegics are able to perform basic daily tasks such as turning on lights and other appliances, drinking, and eating has remained largely unchanged.

Having observed a quadriplegic friend deal with the lack of ability to accomplish these tasks for himself, Dr. M.J. Willard of Boston University decided to train Capuchin monkeys, commonly known as "organ grinder" monkeys, to provide these services. Dr. Willard's program, Helping Hands, Inc., receives monkeys from Disney World. The Disney organization has established a special breeding colony at Epcot Center in Orlando, Florida, thereby making a substantial commitment, both philosophically and monetarily, to Dr. Willard's program.

When the monkeys are 6–8 weeks old they are placed with carefully selected human families for socialization. The foster family must make a three-year commitment to raising, and spending a tremendous amount of time with, the monkey. Currently 63 families are raising young monkeys and another 100 families have been cleared to be foster parents.

After the socialization of the monkey, the monkey participates in a 6- to 9-month training period during which time the monkey is taught nine common behaviors. Once a placement decision is made, the monkey is then taught six or seven new behaviors unique to the individual quadriplegic's needs.

The monkey is then taken to its new owner, who is trained in how to utilize the monkey. This placement procedure is the most costly part of acquiring a monkey and is estimated to cost $6,000 per placement. According to Dr. Willard, methods to bring down the cost are being developed and are planned to be implemented in the near future. They include having the necessary equipment (reward and punishment equipment, as well as a laser beam used to direct the monkey) installed on the quadriplegic's wheelchair before the trainer arrives, using videotapes to familiarize the recipient with working with the monkey, using student trainers, and having a support person in the community to help with the training.

Once the assistive monkey is at the recipient's home, it performs a variety of tasks, including retrieving a fallen mouthstick and putting the correct end in the owner's mouth, retrieving food or drink from the refrigerator and bringing it to its owner, putting a selected book on the reading stand, putting a selected cassette, audio or video, in the cassette player, and turning lights, radios, and television sets on and off. In addition to giving the disabled person added independence from a personal-care attendant, the monkey also serves as a companion and as a bridge between its owner and other persons, who are often fascinated by the monkey and, as a consequence, interact more readily with its owner.

Because of the extensive process involved from birth to placement, and the newness of the program, the costs are high, and the number of monkeys available are few. The cost per monkey ranges between $11,700 and $21,000 depending on the number of monkeys placed each year. Dr. Willard has now been training monkeys to assist quadriplegics for 10 years. VA has contributed approximately $940,000 to the funding of Dr. Willard's program from fiscal year 1983 through June 31 of this year.

VA's Rehabilitation Research and Development Evaluation Unit performed an evaluation of the Helping Hands program during 1989, and issued a report of its findings on May 31. This report was submitted to the Committee on June 22, pursuant to a request made at the Committee's May 18 hearing. In addition to finding that the monkeys "are useful, effective and acceptable," the Evaluation Unit's report concluded:

> Monkeys can be taught to perform a variety of useful tasks for disabled individuals. By performing these tasks, the monkey helper offers a degree of freedom for a caregiver. A monkey helper also can provide the opportunity for the disabled person to be without a caregiver for some period of time. The performance of assistive tasks is a significant positive contribution to enable a disabled individual to become more independent. Sufficient positive results were obtained in this evaluation to conclude that monkey helpers work, are useful and accepted.
>
> The monkey helper was positively accepted in the household of each of the nine disabled individuals and by all types of caregivers, friends, family and paid attendants. Monkey helpers exhibited a positive behavior and became an accepted member of the household.

The Committee notes that at the May 18 hearing, VA deferred commenting on the legislative proposals relating to assistive monkeys in order to review the evaluation discussed above.

With regard to service dogs, a nonprofit organization known as "Canine Companions for Independence" (CCI) was founded in 1975 by Ms. Bonita M. Bergin. CCI trains dogs to help individuals with disabilities other than blindness. These service dogs are trained in over 809 specialized commands such as retrieving objects, pulling wheelchairs, and turning on and off lights and other switches. CCI has placed over 300 dogs with disabled individuals. In 1987, CCI received a Distinguished Service Award from the President's Committee on Employment of the Handicapped. Although service dogs lack the dexterity of monkeys, some veterans may find it preferable to have a canine, rather than a simian, aide.

Committee bill

The Committee believes assistive animals can add significantly to the quality of a disabled individual's life and that VA should be on the frontline of innovation with respect to the rehabilitation of and assistance for severely disabled veterans.

Hence, the Committee bill would provide for the conduct of the four-year pilot program under which VA would be (1) required to furnish assistive monkeys to quadriplegic veterans who have service-connected disabilities rated 50 percent or more and to facilitate the furnishing of assistive monkeys to other quadriplegic veterans, and (2) authorized to furnish service dogs to quadriplegic veterans with service-connected disabilities rated 50 percent or more and to facilitate the furnishing of service dogs to other quadriplegic veterans. Priority would be given to furnishing monkeys and dogs to vetrans with service-connected quadriplegia, but only veterans determined by the Department to be well-suited for the care and effective use of the monkey or the dog would be eligible to receive them. The Secretary would be expressly authorized to reimburse providers of the monkeys being furnished at VA expense with reimbursement for training costs incurred and to make advance payments under terms and conditions that would protect the interests of the Federal Government. Ownership of the animal would be determined by a contract between the veteran and the provider. In addition, the Secretary would be required to provide for the welfare of the assistive monkeys furnished under the pilot program.

An evaluation of the first three years' experience under the program would be required—with a report to the Committees on Veterans' Affairs due by February 1, 1993—in order to determine the cost and cost-effectiveness of providing the animals and the nature and extent of the benefit to the veterans and their effect on primary caregivers.

Because of the many questions that exist with regard to this type of program, the Committee bill requires a pilot program for providing these animals. These questions include, but are not limited to, the actual benefits to be gained by the use of a monkey or dog; the demand by veterans for such animals; the ability of Helping Hands both to provide monkeys in the quantity needed to meet that demand and to assist the veterans in learning to use the monkeys; the effect, if any, that providing the animals should have on aid and attendance allowances; the effect that providing the animals would have on the ability of veterans to recruit and retain paid caretakers and on the morale of unpaid caretakers; the arrangements that need to be made for the care of the animal when the veteran is hospitalized; the overall treatment of the animals by all those involved in the program; and the best method for handling a situation in which the placement of the animal does not work out, from either the veteran's or the provider's point of view. The Committee believes that the evaluation conducted by VA, discussed above, offers strong preliminary evidence that this kind of program can provide significant benefits to quadriplegic veterans and add tangibly to the quality of their lives. However, the issues noted above need to be more fully developed through the pilot program.

In addition, in these times of severe budget constraints, the Committee believes it is very important to consider the cost-effectiveness of any new benefit. As discussed above, each monkey is estimated to cost between $11,700 and $21,000 from birth through training to placement. If the assistance provided by a monkey proves enriching to a veteran's life in the manner in which it is anticipated, the cost would not seem excessive as a lifetime cost for a severely service-connected-disabled veteran. Before making an open-ended commitment of scarce resources to this innovative program, however, the Committee believes further information is needed.

The Committee bill would specifically allow—in an effort to ensure that funding is available for, and recognizing the substantial cost involved in, bringing the monkeys through the process from birth to training to placement—the VA to reimburse the provider of the animals for training costs incurred and to make advance payments under terms and conditions that would protect the interests of the United States Government.

In addition, with respect to the provision specifying that ownership of the animal would be determined by a contract between the provider and the veteran, the Committee notes that the contract could vest title to the animal permanently in the veteran or, if the VA consented, could provide for VA to retain title, and provide payments for retraining (even after the termination of the pilot program).

Cost: CBO estimates that enactment of section 216 would entail estimated costs of $1 million in budget authority and $1 million in outlays in FY 1990, and a total of $1 million in budget authority and $1 million in outlays for FYs 1990–1994.

Signal Dogs for Certain Disabled Veterans

Section 217 of the Committee bill, which is derived from section 215 of S. 13, which in turn was derived from section 615 of S. 2011 as reported by the Committee last year and passed by the Senate on October 18, 1988, in H.R. 4741, would authorize VA to provide signal dogs to veterans who have service-connected hearing impairments and are in need of such dogs. VA would also be authorized to pay a veteran's travel and incidental expenses for travel to and from home that is necessary in connection with the veteran becoming adjusted to such signal dog.

Signal dogs, also known as hearing dogs, assist hearing-impaired individuals to overcome some of the problems and dangers that are related to their disabilities. These dogs are trained to distinguish sounds such as a doorbell, a siren, a fire alarm, a child's cry, a car's horn, and a telephone ring, and to alert their owners through nonaural means.

The Committee understands that VA believes it does not have the authority under current law to provide signal dogs. The Committee intends to provide such authority in section 217.

Cost: CBO estimates that enactment of section 217 would entail no significant costs.

State Home Construction Grants

Section 218, which is identical to the provisions of section 213 of S. 13 as introduced, which in turn is similar to the provisions of section 614 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would amend section 5033(a) of title 38 to extend for three years, through September 30, 1992, the authorization of such annual appropriations as are necessary for State Veterans' Home construction grants. A related provision was contained in section 4 of S. 748.

Background

VA operates two separate programs of assistance to State Home hospital, nursing home, and domiciliary facilities: a program (under subchapter V of chapter 17 of title 38) of per diem payments for care provided to eligible veterans and a program (under subchapter III of chapter 81 of title 38) of matching grants for the construction, remodeling, or renovation of State Home facilities.

Currently, a total of 36 States operate 58 State Homes with a total of 18,879 beds providing hospital (689 beds), nursing home (11,547 beds), and domiciliary (6,643 beds) care. For fiscal year 1988, $40.3 million was appropriated for the State Home construction program. For fiscal year 1989, $42 million. As of the end of June 1989, there was a nearly $190-million backlog of eligible pre-approved projects. As of the end of July 1989, applications for which funds remain unavailable totalled $138 million. VA has requested the appropriation of $42 million for this program for fiscal year 1990.

At the Committee's May 18, 1989, hearing, section 213 of S. 13 received general support and no opposition. VA supported S. 748, a bill submitted at the request of the Administration, which would have extended the program for 5 years rather than 3 as well as authorized $42 million for fiscal year 1990 and such sums as would have been necessary for the 4 succeeding years.

Committee bill

The Committee bill would extend for three years, through September 30, 1992, the authorization to appropriate such sums as are necessary to carry out the State Home construction grant program under subchapter III of chapter 81. The Committee strongly supports the State Home program and its continuation as an important link in meeting the needs of the aging veteran population, and believes that continuing the authorization of appropriations for this program is fully justified in light of its importance in overall efforts to meet the health-care needs of the aging veteran population.

The Committee believes that, since the priority system for implementation of this program was only recently modified (in 1988), a 3-year extension would be more appropriate so as to ensure Congressional oversight in a timely fashion. In addition, the Committee does not believe it necessary to specify the FY 1990 level of funding.

Cost: According to CBO, the enactment of section 218 would entail estimated costs of $44 million in budget authority and no outlays in FY 1990 and total estimated costs of $138 million in budget authority and $102 million in outlays in FYs 1990–1994.

Prosthetic Services Report

Section 219 of the Committee bill would require the Secretary to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report by January 15, 1990, containing (1) an evaluation of the reasons for the accumulation of the backlog in VA's provision of prosthetic appliances that grew to $10.6 million dollars in fiscal year 1989 and for the failure to observe, in connection with the provision of prosthetic appliances, the priority established in section 612(i) of title 38; and (2) a description of the actions that the Secretary has taken and is planning to take to prevent such a recurrence of failure to observe such priorities and the accumulation of a significant such backlog.

VA's Prosthetics Task Force November 25, 1988, report indicated that in fiscal year 1987 the Prosthetics and Sensory Aids Service had a funding shortfall of $6.2 million. In fiscal year 1988, the shortfall for prosthetics grew to $7.4 million. In fiscal year 1989, until July 1, the funding shortfall has grown to a $9 million. Such chronic funding shortfalls translate into waiting periods of up to six months for replacement limbs, wheelchairs, eyeglasses, hearing aids, and other prosthetic appliances. Without needed prosthetic appliances, veterans endure serious functional difficulties and, often, lost productivity that the appliances help to overcome.

Under section 612(i) of title 38, VA is required to ensure that veterans who need treatment for their service-connected disabilities and veterans with service-connected disabilities rated at 50 percent or more are in the top-priority category. According to VA, 43 percent (539,201) of the 926,649 veterans who currently receive prosthetic appliances are provided them for service-connected disabilities and thus are eligible for top-priority care. Of the remaining 387,448 veterans who currently receive prosthetic appliances for non-service-connected conditions, a VA survey conducted on June 29 and 30, 1989, found that approximately 38 percent (147,230) are veterans who are rated at 50 percent or more service-connected disabled for another disability (not the disability for which the prosthetic appliance is provided) and are thus eligible for top-priority care. The Committee believes that the long waiting periods and funding backlogs that have slowed the furnishing of prosthetic appliances to these veterans indicate that VA has failed to observe the priority requirement contained in section 612(i) with respect to the provision of prosthetic appliances to such veterans. For veterans whose service to their country included the sacrifice of a limb or the ability to walk or see or hear, any significant wait for prosthetic appliances is totally unacceptable.

In the fiscal year 1989 Dire Emergency Supplemental Appropriation Act (Public Law 101-45), Congress enacted a $345-million supplemental appropriation for the VA Medical Care Account, including a $5 million add-on, initiated by the Senate, specifically for the purchase of prosthetic appliances. In addition, the Senate Committee on Appropriations report on this legislation (S. Rept. No. 101-40, page 40) and the conferees (H. Rept. No. 101-89, page 25) directed VA to use any remaining funds projected to be available during the closing days of fiscal year 1989 for the purchase of needed medical equipment and prosthetic appliances.

The Veterans' Affairs Committee believes strongly that VA must take steps to ensure that (1) any backlog that exists in the procurement of prosthetic appliances is eliminated as quickly as is practicable, and (2) there is no recurrence of the failure to accord the required statutory priority in the furnishing of prosthetic appliances (or any other medical appliances, equipment, supplies, or services) to certain veterans.

Cost: CBO estimates that enactment of section 223 would entail no significant costs.

Outpatient Dental Care

Section 220 of the Committee bill, which is similar to the provisions of section 2 of S. 748, would (1) amend section 612(b)(1) of title 38 to add a new clause (H) to extend authorization for outpatient dental services to include furnishing such care when medically necessary in preparation for hospital admission, and (2) amend section 612(b) (3) of title 38 to increase from $500 to $1,000 the amount VA can reimburse fee-basis dentists for dental care without requiring a second opinion.

Under existing law, VA is generally authorized to provide medical services needed to prepare a veteran for hospital admission. However, a statutory limitation on the provision of outpatient dental care precludes VA from furnishing medically-required preadmission dental procedures. Therefore, VA often hospitalizes a veteran in order to perform dental work which is necessary prior to providing other medical procedures. For example, a dental infection must be treated before VA performs surgical implantation of certain prostheses.

Current law also requires a second opinion from a VA dentist for fee-basis dental procedures which are estimated to cost in excess of $500 annually for a veteran. At the time the $500 cap was enacted on June 13, 1979, in Public Law 96-22, this was a reasonable limitation. Inflation over the last 10 years has caused that figure to be outdated. Additionally, reexamination is sometimes inconvenient for the veteran and may also be more costly than any savings from receiving the second opinion.

A GAO report published on June 19, 1981, entitled "Providing Veterans with Service-Connected Dental Problems Higher Priority at VA Clinics Could Reduce Fee-Program Costs" (HRD-81-82) examined the VA fee-basis dental-care program. GAO found that, in FY 1979, VA paid to send 90,000 veterans seeking outpatient care for service-connected dental problems to dentists in private practice at a cost of $52 million. GAO also found that, as of October 1, 1980, over a year after the enactment of Public Law 96-22, VA had provided no formal guidance to its dental clinics on implementation of this law and that, in FY 1980, fee-program authorizations actually increased by about 20,000 over FY 1979 authorizations. GAO recommended that VA strengthen procedures for authorizing fee-for-service dental care.

GAO published a supplement to this 1981 report in May 1982 (GAO/HRD-81-82S) comprised of GAO's analysis of and response to VA's comments on the initial report. In this supplement, VA disagreed with GAO statements that VA's efforts to reduce fee-program referrals had been ineffective and that VA had provided no formal guidance to its dental clinics on the implementation of Public Law 96-22.

In the years since this GAO report, fee-basis dental care has decreased. The number of fee-dental-care cases was under 10,000 per year in the 1960s then grew quickly in the 1970s to well over 100,000 per year, with a high of 170,423 cases in FY 1973. In FY 1981, the number of fee-dental-care cases was 74,528; by FY 1987, the number of fee-dental-care cases had decreased to only 18,434; in FY 1988, the number rose slightly to 20,509.

Similarily, costs for VA fee-basis dental care have decreased since the enactment of Public Law 96-22 and the 1981 GAO report. Expenditures for fee-basis dental care reached a high of $56,508,000 in FY 1976. In FY 1981, fee-basis dental care expenditures were $50,304,000; in FY 1988, these costs had decreased to $10,398,000.

The Committee is satisfied from VA's testimony and answers to questions that VA has this program under control. However, the Committee will continue to monitor fee-dental-care expenditures closely to ensure VA is utilizing its dental resources most efficiently and effectively.

Cost: According to CBO, enactment of section 220 would entail no significant costs or savings.

Reimbursement for Emergency Care of Vocational Rehabilitation Participants

Section 221 of the Committee bill, which is identical to the provisions of section 3 of S. 1004, would amend section 628(a)(2) of title 38 to provide specific authority to the Secretary to reimburse a service-disabled veteran in a VA vocational rehabilitation program for certain emergency hospital or medical services if the veteran could not reasonably obtain those services through VA or another Federal health-care facility.

Under current law, VA has the authority to pay for unauthorized emergency medical treatment for certain veterans—including some participants in vocational rehabilitation programs under Chapter 31 of title 38. The participants in vocational rehabilitation programs who are not eligible for reimbursement for emergency care are (1) those who participate in independent living programs that do not necessarily involve a "course of training" with a specific vocational goal and (2) those who have completed a course of training but have not yet obtained employment. Under either of those circumstances, the veteran is still a participant in the vocational rehabilitation program and still a responsibility of VA.

The provision in the Committee bill would specifically authorize all participants in a vocational rehabilitation program (as defined in section 1501(9) of title 38) to be eligible for emergency care reimbursement.

Cost: According to CBO, enactment of section 221 would entail no significant costs.

Repeal of Authority To Furnish Tobacco to Veterans Receiving Hospital or Domiciliary Care

Section 222 of the Committee bill, which is identical to the provisions of section 5 of S. 574, which in turn is identical to the provisions of section 341 of S. 9 as reported by the Committee and passed by the Senate on December 4, 1987, in H.R. 2616, would repeal section 615 of title 38, which authorizes the Secretary to furnish tobacco to hospitalized veterans.

Under current law, the Secretary is authorized to furnish cigarettes and other tobacco products to veterans receiving hospital or domiciliary care. The Secretary has not used this authority for over 20 years.

The Committee bill would eliminate this authority which is clearly inconsistent with current VA practice. The Committee believes that, in light of the information regarding the health hazards associated with smoking and the potential harm to those in the vicinity of smoke, tobacco products should not be given to hospitalized veterans. The distribution of tobacco products—at no cost to the veteran—may encourage some to utilize such products. The Committee notes that repeal of this authority would not prohibit the canteen service from selling tobacco products, although the Committee understands that this policy is currently under review in Central Office and on a case-by-case basis at many medical centers (some, such as the Minneapolis, Minnesota, VAMC, have already discontinued tobacco sales at their canteens). The Committee further notes that on June 26, 1989, VA issued Circular 10-89-63 which sets forth VA's smoke-free policy. This policy became effective at 33 health-care facilities and 185 Vet Centers on July 5, 1989, although a 45-day "adjustment" period to August 20 is provided for.

Cost: According to CBO, the enactment of section 222 would entail no significant costs.

Sharing of Specialized Medical Resources

Section 223 of the Committee bill, which is identical to the provisions of section 222 of S. 13 as introduced, which in turn is identical to the provisions of section 613 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would amend sections 5051 and 5053(a) and (b) of title 38 to revise VA's authority to enter into agreements for sharing scarce medical resources. These revisions would (1) expand the categories of facilities with which the VA may enter into sharing agreements to include all health-care facilities, (2) delete the requirement that reimbursement rates cover full costs and substitute the standard used in section 5011 for VA-Department of Defense (DOD) sharing agreements—a "methodology that provides appropriate flexibility" after costs are taken into account—and (3) provide that payments for the use of VA resources be returned to the VA facility involved.

Background

Subchapter IV of chapter 81 of title 38, relating to the sharing of medical facilities and information, was enacted in 1966 as part of Public Law 89-785 for the purpose, in part, of improving the care furnished veterans by authorizing VA to enter into agreements with medical schools, hospitals, and research centers under which VA could receive from or share with these facilities specialized medical resources which might otherwise not be feasibly available or effectively utilized for veterans or others. Specifically, under section 5053(a) as enacted in 1966, VA "hospitals" could enter into arrangements with "other hospitals (or other medical installations having hospital facilities) or medical schools or clinics" for mutual use or exchange of use of (1) a non-VA specialized medical resource when the arrangement would obviate the need for VA to acquire that kind of resource, or (2) VA specialized medical resources which are justified on the basis of veterans' care but which are not utilized to their maximum effective capacity. Section 304 of Public Law 96-151, enacted in 1979, expanded this authority to include sharing arrangements with organ banks, blood banks, and similar institutions. Over the past eleven years, from fiscal year 1978 through fiscal year 1988, the sharing program grew from 224 contracts to 385 contracts. In this eleven year period, the costs of resources acquired by VA grew from approximately $12 million to $41.7 million, while the value of resources provided by VA grew less rapidly, from $7 million to $11.3 million.

Regarding the issue of the types of facilities with which VA should be authorized to share resources, the Committee notes that since the enactment in 1983 of Medicare's so-called "prospective payment system" in Public Law 98-21, many specialized medical procedures which formerly were performed only in hospitals have been moved to outpatient facilities. A variety of entities furnishing community health care has been spawned, and it is sometimes difficult to fit all such facilities into conventional, familiar categories.

With respect to the charges which VA may specify or require, current law—section 5053(b) of title 38—requires that sharing arrangements with community facilities provide for "reciprocal reimbursement based on a charge which covers the full cost of services rendered, [and] supplies used, and including normal depreciation and amortization costs of equipment." Contrasted with this standard is the much less restrictive standard in section 5011(e) of title 38, for sharing agreements entered into between VA and DOD. That standard requires that reimbursement be based upon a mutually-agreed upon "methodology * * * that provides appropriate flexibility to the heads of the facilities concerned to take into account local conditions and needs and the actual costs to the [providing facility] * * * of the health-care resources provided." Under this formulation, heads of VA and DOD medical facilities may negotiate a rate that is less than actual cost.

The General Accounting Office (GAO), in a March 1988 report—"VA/DOD Health Care: Further Opportunities To Increase the Sharing of Medical Resources" (GAO/HRD-88-51)—stated, on page 18, that several directors of VA facilities were unaware of the less restrictive standard in section 5011 and when negotiating with DOD facilities, applied the standard set forth in section 5053(b) which requires full-cost reimbursement. GAO concluded that the application of the full-cost requirement set forth in section 5053(b) served as a disincentive to sharing between the two agencies when the full cost of the services is greater than the price at which the same services may be obtained in the community.

Committee bill

The Committee believes that, if VA is to be able to take full advantage of sharing arrangements, it must have the flexibility to enter into agreements with new entities or entities which already exist but which are providing a different level of care than in the past. Therefore, the Committee bill would expand the categories of facilities with which VA could enter into sharing arrangements so as to encompass any health-care facility.

The Committee bill would also amend section 5053(b) to incorporate the payment standards provided for VA-DOD sharing—a "methodology that provides appropriate flexibility to the heads of facilities concerned"—and to require that funds accrued as a result of these agreements be returned to the VA facility involved.

The Committee believes that it is reasonable to conclude that an impediment similar to that which the GAO found when reviewing VA/DOD sharing exists with respect to sharing between VA and non-federal facilities, that is, full-cost reimbursement can be greater than the price at which the same services may be obtained in the community and may preclude some mutually beneficial arrangements. The purpose of entering into sharing arrangements is to improve VA care by facilitating the furnishing of a complete range of health-care services to veterans and to provide for fully effective utilization of VA specialized medical resources when veterans' immediate needs do not require maximum utilization of those resources. The Committee believes that providing VA with the greater measure of flexibility specified in section 5011 would help to ensure that the stated intent of the sharing authority could be more fully realized.

In addition, the Committee believes that, as also provided in section 5011 with respect to VA/DOD sharing, requiring the funds received by VA to be returned to the VA facility providing the resources could eliminate a disincentive to VA facility directors seeking out and entering into sharing arrangements that could strengthen their capacities to provide health-care services to veterans.

Cost: According to CBO, the enactment of section 223 would entail no significant costs.

Development of Recommended Legislation for the Elimination of Inconsistencies in Certain Veterans Benefits Laws

Section 224 of the Committee bill, which is derived from section 225 of S. 13 as introduced, would establish a task force—including representatives of VA offices with responsibility for the benefits involved and appropriate representatives of concerned organizations—to recommend policies and legislation for the elimination of inconsistencies among provisions relating to eligibility for various medical assistive devices and certain other health-care benefits.

Background

Current law contains an array of variations among the circumstances in which VA may provide veterans with various types of medical and assistive devices and related services. A review of these provisions—including sections 601(6) (which provides definitions of "medical services"), 612 (relating to eligibility for outpatient services), 614 (eligibility to be reimbursed for incidental expenses for prosthetic appliances and the Secretary's authority to provide seeing-eye dogs), 617 (Secretary's authority to furnish home health services and devices including invalid lifts), and 619 (the Secretary's authority to replace or repair certain prosthetic and other appliances) of title 38, United States Code, indicates that each provision has added an important piece to the legislative scheme, but, as a whole, they lack both clarity and a consistent conceptual basis.

For example, under section 614(b) of title 38, VA may provide to veterans who are "entitled to" service-connected disability compensation seeing-eye or guide dogs and "mechanical or electronic equipment" to help veterans overcome the handicap of blindness. To be eligible for the dog and such equipment under this provision, the veterans' blindness need not be service-connected; the requirement is only that the veteran have any service-connected disability of any kind as long as it is compensable.

Thus, it would appear that the phrase "entitled to" could cover situation where the veteran, although not actually receiving compensation, would be qualified to do so. The meaning is unclear.

Section 612(a)(2) authorizes VA, as part of the veteran's care, to furnish to any veteran who is receiving outpatient treatment needed for a service-connected disability, or a veteran having a service-connected disability rated at 50 percent or more who is receiving outpatient treatment needed for a non-service-connected disability, home improvements costing up to $2,500 that are "necessary to assure the continuation of treatment or provide access to the home or to essential lavatory or sanitary facilities." Section 612(f)(2) authorizes VA to furnish to certain other veterans, as part of outpatient treatment they are receiving from VA for non-service-connected disabilities in followup to hospital care or to obviate the need for hospital care, the same type of home improvements, subject to a $600 limit.

Under section 617(a), VA may provide "an invalid lift * * *, if medically indicated," in the homes of certain veterans, apparently without regard to whether they are receiving VA care, but subject to certain conditions not required under section 612 (a)(2) or (f)(2), that is, under section 617(a) the veteran must actually be "receiving" either VA service-connected disability compensation at the special rates provided for totally disabled veterans with certain specific severe disabilities—which are not required to be related to the need for the lift—or needs-based VA non-service-connected-disability pension "by reason of being in need of regular aid and attendance." Pension, unlike compensation, is payable only to veterans who served during a period of war.

Section 617(a) also authorized VA to furnish veterans—again apparently without regard to whether or not they are receiving VA care—actually receiving compensation at those special rates or pension by reason of need for aid and attendance "any type of therapeutic or rehabilitative device, as well as other medical equipment and supplies (excluding medicines), if medically indicated." This broad description of the assistance which may be furnished would seem to overlap with much of sections 612 (a)(2) and (f)(2)'s authority for home improvements authority and with section 614(b)'s mechanical or electronic equipment authority and possibly with the specific invalid lift authority itself.

After VA ruled—rather incomprehensibly in view of the broad section 617(a) authority—that these and other authorities generally did not include the authority to provide telecaptioning television decoders to hearing-impaired veterans, Congress enacted section 617(b) to authorize VA to provide a decoder to a "veteran who is profoundly deaf and is entitled to compensation on account of hearing impairment." As to this authority, the service-connected impairment need not be the cause of the veteran's profound deafness as long as the hearing impairment is compensable.

The Committee would also note that section 601(6) defines "medical services" to include not only medical examination, treatment and rehabilitative services, but also to include such items as "wheelchairs, artificial limbs, trusses, and similar appliances * * * and such other supplies or services as the Administrator determines to be reasonable and necessary." This is the term used in section 612 (a)(1) and (f)(1) to denote the services which the VA is authorized to provide on an outpatient basis, if they are "needed", under section 612(a)(1), or "reasonably necessary", under section 612(f)(1). The term "medical services" is also included in the definition of the term "hospital care" in section 601(5). Thus, all veterans who are entitled to or eligible for and receiving VA hospital care or outpatient treatment are, respectively, entitled to or eligible for "reasonable and necessary supplies and services"; there is no clear line drawn in the law to distinguish, for example, the supplies available under sections 601(6) and 612 (a) and (f) and those—as well as equipment and devices—available under section 617(a), except that "supplies" under section 617(a) does not include "medicines".

Committee bill

To try to analyze and unravel many of the questions and anomalies pointed up by the above discussion, section 224 of the Committee bill would require the Secretary to establish a task force, consisting of representatives of the VA offices with responsibility for the benefits involved and appropriate representatives of concerned organizations, to recommend policies and legislation for the elimination of inconsistencies among provisions relating to eligibility for medical devices and certain other health-care benefits. At a time to be specified by the Secretary, the task force would submit a report to the Secretary containing a description of the inconsistencies identified, the policies and legislative proposals recommended, and the rationale for each such recommendation. The Secretary would then review the report and either approve the recommendations or prepare alternative suggestions. Within 180 days after the date of enactment, the Secretary would be required to submit the report along with his or her recommendations and an explanation for any differences between the two, to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

The above discussion raises many questions regarding the eligibility criteria for these medical or disability-related items, including the reasoning that supports the variations in the conditions of eligibility, such as the need for the item for a service-connected disability; the existence of any service-connected disability; the existence of a service-connected hearing disability for purposes of eligibility for a telecaptioning decoder; the existence of a service-connected disability, not necessarily related to vision, for purposes of eligibility for a seeing-eye dog; the relevance of wartime service only in the case of veterans with non-service-connected disabilities; the receipt of, as opposed to entitled to, compensation; and whether the assistance in question is medically indicated, needed, or reasonably necessary.

In the same vein are troublesome questions about the meaning and relationship of a variety of different terms in these sections such as "artificial limbs, trusses, and similar appliances", "supplies", "prosthetic appliances", "mechanical or electronic equipment", "therapeutic or rehabilitative device", "other medical equipment and supplies", and "devices for assisting in overcoming * * * deafness."

The Committee emphasizes that the foregoing are just a few of the issues raised by the sections that have been discussed. The universe of questions is far greater. Moreover, there are many related questions as to how VA has utilized these discretionary authorities, whatever they may mean.

Accordingly, the Committee believes a task force is needed to review the law, and recommend policies and legislation for the elimination of the inconsistencies. The Committee intends the task force to include representatives of the Office of the General Counsel, the Veterans Benefits Administration, and the Veterans Health Services and Research Administrations, among others, and representatives of concerned veterans' service organizations, especially those specializing in disabilities.

Cost: CBO estimates that enactment of section 224 would entail no significant costs.

Part C—Health-Care Personnel

Recruitment and Retention of Health-Care Personnel Overview

Sections 251 through 270 of the Committee bill, described in detail below, relate to the recruitment and retention of health-care personnel within VA facilities. The Committee continues to be most concerned about the shortages of health-care professionals currently being experienced by VA.

Title III of S. 9 as reported by the Committee on November 6, 1987 (S. Rept. No. 100-215, pages 150-61), contained provisions relating to recruitment and retention of health-care professionals. Subsequently, these and other measures pertaining to recruitment and retention strategies, with modifications, were included in title II of H.R. 2616 as enacted into law on May 20, 1988 (Public Law 100-322).

More recently, title VI of S. 2011 as reported by the Committee on August 1, 1988 (S. Rept. No. 100-439, pages 150-67) and the provisions of which were passed by the Senate in H.R. 4741 on October 18, 1988, contained additional measures designed to assist VA in its recruitment and retention efforts. Unfortunately, because the Committee was unable to reach agreement with the House Veterans' Affairs Committee, the compromise legislation forged between the two bodies—enacted in Public Law 100-687—contained few health-care provisions. Many of those Senate-passed proposals are contained in this Committee bill.

Problems associated with recruitment and retention of health-care professionals are not new. Periodically the Nation and VA have been faced with shortages of such personnel. In both, a number of factors have contributed to this problem, including inadequate salaries, increased demand for personnel, poor working conditions, and decreased enrollment in educational institutions which prepare health-care professionals. Because the health care furnished to veteran-patients is largely a function of the quality of the personnel furnishing the care, the Committee believes it is incumbent on the Congress to do all that can be done reasonably to enable VA to attract the best health-care personnel to the system.

Since the time that H.R. 4741 was passed by the Senate last year, developments have occurred both nationally and in VA which adversely affect the Department's ability to recruit and retain qualified health-care professionals. Although many of the studies and reports published relating to these developments have involved nursing—primarily because this is the largest group of health-care professionals—the same conclusions can be drawn with regard to other professions such as pharmacists, physical and occupational therapists, and medical technologists.

In this regard, according to an August 1989 report entitled "AHA tracks shortages in health care personnel", 48 percent of hospitals responding to the AHA's 1988 Human Resources Survey reported a problem with recruiting physical therapists (PT), 31 percent reported a problem recruiting pharmacists, 25 percent reported difficulties recruiting radiologic technicians, 22 percent reported difficulties with medical technicians, and 7 percent reported difficulties with respiratory technicians. Of the hospitals that responded to the AHA survey, 92.8 percent reported experiencing problems recruiting one or more of the 20 health-care personnel categories listed in the questionnaire. Additionally, 88 percent of those responding stated they were having difficulties recruiting registered nurses (RN) and 85 percent identified retention of RNs as a problem.

In late December 1987, the Secretary of Health and Human services established a special Commission on Nursing to advise him on problems associated with the recruitment and retention of RNs and to develop recommendations on how the public and private sectors could work together to address those problems. In its final report, published in December 1988, the Commission concluded that (1) the shortage of RNs is real, widespread, and of a significant magnitude, (2) the shortage is primarily the result of an increase in demand as opposed to a contraction of supply, (3) the shortage is contributing to the deterioration of the work environment and may also have a negative impact on the quality of care provided, and (4) both long- and short-term projections for the future are not encouraging unless significant intervention is forthcoming. The Commission also made 16 specific recommendations and proposed 81 directed strategies in the areas of (1) utilization of nursing resources by focusing nurses time on nursing responsibilities, (2) nurse compensation, (3) health-care financing, (4) nurse decision making, (5) development of nursing resources through facilitating nurse education, and (6) maintenance of nursing resources.

Nationwide, according to the Commission report, the vacancy rate for RNs tripled to 11.3 percent between 1983 and 1987. In a study conducted for the HayGroup, a Washington, D.C., management firm, and reported in the June 27, 1989, edition of USA Today, 60 percent of 857 surveyed hospitals had a nurse vacancy rate above 10 percent; and 19 percent had vacancy rates above 20 percent. According to the HayGroup, vacancy rates above 10 percent "directly threaten quality of health care."

In contrast, VA vacancy rates appear to have leveled off, although VA statistics on this point may be misleading because VA has also been decreasing its authorized number of full-time equivalent employees (FTEE) during the course of this fiscal year. Due to a severe budget shortfall, VA does not have adequate funds both to hire appropriate numbers of personnel and to purchase needed equipment supplies. Rather than divert funds for these latter purposes to support its personnel needs—and further weaken its infrastructure—VA has permitted FTEE levels to decrease. This was further accentuated by a temporary freeze placed on VA hiring on May 28, 1989, that was lifted approximately one month later. According to a semi-monthly VA report entitled "Medical Care FY 1989 FTEE date", by July 1, 1989, VA had 532.8 fewer FTEE RNs than it had on October 24, 1987; 1,122.2 fewer FTEE licensed practical nurses (LPN), licensed vocational nurses (LVN), and nursing assistants (NA), and 2,800.4 fewer FTEE health technicians and other allied health personnel.

Specifically, comparing vacancy and turnover rates published by VA in studies entitled "1986 survey of Health Occupational Staff", and "1987 Survey of Health Occupational Staff", and preliminary figures gathered in preparation for a similar study of 1988 experience, the 1986 vacancy rate for RNs was 1.6 percent, the 1987 vacancy rate was 4.6 percent, and the preliminary 1988 vacancy rate remains at 4.6 percent. Because of the significant decrease in authorized positions, which might have an impact on these rates, the Committee believes the more telling statistic is the turnover rate, which was 16.1 percent for 1986, 22.2 percent for 1987, and 26.5 percent for 1988. Rates for LPNs and LVNs depict a similar trend. The 1986 vacancy rate was 8.4 percent, the 1987 vacancy rate was 10.6 percent, and the preliminasry 1988 vacancy rate is 10.8 percent. The turnover rate for this group of employees was 18.9 percent in 1986, 30.3 percent in 1987, and 35 percent in 1988.

Vacancy and turnover rates for pharmacists, physical therapists, and occupational therapists are similar. The 1986 pharmacist vacancy rate was 8.6 percent; in 1987 it decreased to 7.4 percent, but in 1988 it showed a slight increase to 7.6 percent. The pharmacist turnover rate decreased between 1986 and 1987 from 22.6 percent to 20.1 percent, but in 1988 it rose back to 22 percent. The 1986 physical therapist vacancy rate was 22.6 percent; in 1987 it rose slightly to 24.5 percent; and it rose slightly again in 1988 to 26.3 percent. The turnover rate decreased minimally between 1986 and 1987 from 24.3 percent to 23.9 percent, but in 1988 it again rose to 24.4 percent. Rates for occupational therapists have generally worsened over the years. In 1986 the vacancy rate was 13.7 percent; in 1987 it was 13.5 percent; and in 1988 it grew significantly to 19.1 percent. The turnover rate in 1986 was 23.4 percent; in 1987 it was 26.2 percent; and in 1988 increased to an overwhelming 32.7 percent.

Pay Rates for Nurses and Other Health-Care Professionals in Certain Positions

Section 251 of the Committee bill, which is similar to the provisions of section 101 of S. 947, would amend chapter 73 of title 38 so as to add a new section 4107A to (1) require the Secretary to take steps to establish and maintain, for full- and part-time registered nurses (RNs), levels of pay which are competitive with but not exceeding the pay of employers offering similar employment and competing in the same labor-market area for qualified employees, and (2) authorize the Secretary to establish and maintain levels of competitive pay for employees covered by title 38 for pay purposes only, the so-called "hybrid" category.

Background

The salary rate for RNs working in non-VA health-care facilities varies considerably across the nation. According to the results of a 1988 study by the Executive Compensation Service published in the August 1989 edition of the American Journal of Nursing, the average starting salary paid to RNs in staff positions in the Northeastern U.S. was $23,800, the average salary was $27,800, and the average maximum salary was $31,800; in the Southeastern U.S., the average starting salary was $21,400; the average salary was $24,400, and the average maximum salary was $30,000; in the South Central U.S., the average starting salary was $21,700, the average salary was $25,400, and the average maximum salary was $31,000; in the North Central U.S., the average starting salary was $21,400, the average salary was $25,000, and the average maximum salary was $28,900; and on the West Coast, the average starting salary was $23,700, the average salary was $28,100, and the average maximum salary was $33,300. A 1988 study performed by the National Association for Health Care Recruitment published in the January 1989 edition of the American Journal of Nursing made similar findings.

A study of 1988 salaries undertaken by Cole Surveys, a subsidiary of The Wyatt Company, an international benefits, compensation, and risk-management firm, published in an article entitled "Cole Nurse Compensation" in the December 2, 1988, edition of Modern Healthcare, stated that regional economic conditions figured prominently when reviewing salary increases of nurses. According to this article, salaries of nurses on the East Coast and in the South were increasing the greatest. Base salaries as of July 1, 1988, of medical-surgical nurses in hospitals with 100–349 beds averaged $25,500.

VA salaries are largely determined according to two sections within title 38: sections 4107(b) and 4107(g). Section 4107(b) authorizes eight grades for RNs—Junior, Associate, Full, Intermediate, Senior, Chief, Assistant Director, and Director. Specific qualifications for entry into any one of the eight nurse grades is described in VHS&RA Supplement, MP-5, Part II, Chapter 2. For example, to be appointed to Junior grade, a nurse would have to have graduated with an associate degree or diploma in nursing and have no nursing practice experience; to be appointed to Associate grade, a nurse would have to have completed either one year of successful nursing practice or have no nursing practice experience but have received a Baccalaureate degree in nursing; and to be appointed to Full grade, a nurse would have to have completed either two years of successful nursing practice, or have a Baccalaureate degree in nursing from an accredited program and 1 year of successful nursing practice, or have completed a Master's degree in nursing, or have a Master's degree in a field related to nursing and a Baccalaureate degree in nursing. At present, these three grades are considered to be entry level grades for bedside staff-nurse positions in VA.

Generally, salary rates for the eight nursing grades correspond to grades 6–15 of the general pay schedule. As of January 1989, Junior grade salaries ranged from $17,542 to $22,807; Associate grade salaries ranged from $20,521 to $26,677; Full grade salaries ranged from $23,846 to $31,001; and Intermediate grade salaries ranged from $28,852 to $37,510. As of June 30, 1989, the average salary of nurses assigned to Junior grade was $23,533; Associate grade was $25,643; Full grade was $29,146; and Intermediate grade was $34,286.

On August 26, 1980, as part of Public Law 96–330, section 4107(g) of title 38 was enacted so as to authorize VA to increase pay for title 38 employees in order to provide for an amount of pay "competitive with, but not exceeding, the amount of the same type of pay paid to the same category of personnel at non-Federal facilities in the same labor market." When this measure was first enacted, it was thought that its use would be the exception rather than the rule. As of June 30, 1989, however, VA has authorized 137 of its 172 medical facilities to implement special rates for RNs, 127 facilities to implement special rates for pharmacists, 94 facilities to implement special rates for PTs, and 75 facilities to implement special rates for LPNs.

Although special salary rates have helped VA maintain a competitive posture within an individual health-care facility's respective labor market area, Congress conceived this authority as a measure which might be used in special circumstances rather than as the norm. At the time this measure was enacted, Congress did not anticipate that VA salaries would lag behind to such a great extent or that salaries in a community would change so frequently.

Additionally, as set forth in VA guidelines, MP–5, Part II, Chapter 3, Section D, submission of a special-rate request "presupposes all recruitment possibilities have been exhausted and full attention has been given to addressing retention considerations such as working conditions and duty assignment." Thus, prior to being able to establish a special salary rate, a VA health-care facility director is required to submit to VA Central Office (VACO) substantial amounts of information to demonstrate the existence of a problem with the recruitment and retention of the category of personnel in question. The gathering of such data and the development of a persuasive document for VACO review frequently takes a month or longer. Once submitted to VACO, the justification for the special rates is carefully reviewed and either approved, returned for further information, or disapproved. According to a recent VA survey of 189 cases in which special rates became effective between January 31, 1989, and June 30, 1989, the lag time between VACO receipt and approval averaged about 71 days. The 188 special rate authorizations subject to OPM review after VA review showed an average turnaround time of 25 days.

Recently, there has been renewed interest in the possibility of the use of "locality" pay within the Federal system. In a study released on March 29, 1989, the National Commission on the Public Service, chaired by former Federal Reserve Chairman Paul A. Volcker, recommended, "* * * a new pay-setting system that recognizes the fact that public employees live and work in localities characterized by widely different living costs and labor-market pressures, and adjusts compensation upward accordingly." Although the details of such a system were not extensively described in the Commission's report, reference was made to maintaining the current pay structure and providing a special allowance for those living in high-cost areas and in areas of intense labor competition. In a similar vein, GAO, testifying before the Employment and Housing Subcommittee of the House Government Operations Committee in July 1988, recommended that the Federal government adopt a locality-based pay system that is competitive with the private sector.

By virtue of the special-rate authority, VHS&RA has been providing pay competitive to that paid in the community for a number of years. According to VA statistics as of December 31, 1988, 30,700 employees, both title 38 and hybrids—27.7 percent of all VHS&RA employees excluding physicians—were covered by over 770 individual special-rate authorizations in 40 occupations. This is in comparison to 19,500 employees on March 1, 1988—an increase of 57 percent in a 10-month period. At the end of January 1989, 154 VHS&RA facilities had a special-rate authorization for at least one health-care occupation.

Committee bill

In order to provide VA the tools to be proactive in setting pay for its health-care personnel rather than reactive, section 251 of the Committee bill would require the Secretary of VA to establish and maintain levels of pay for full- and part-time registered nurses (RNs), registered nurses anesthetists (RNAs), and certified registered nurse anesthetists (CRNAs), and authorize the Secretary to establish and maintain levels of competitive pay for other health-care employees covered by title 38 for pay purposes only (the so-called "hybrids", which includes certain psychologist, respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists), which are competitive with but not exceeding the pay of employers offering similar employment and competing in the same labor-market area for qualified employees. This measure was amended from that which was introduced to include the following: (1) When making the determination as to what, if any, pay adjustment would be made, the Federal COLA would be passed along unless the facility director takes affirmative action not to do so; (2) in those facilties where RNs, RNAs, CRNAs, or other affected employees are covered by a collective bargaining agreement, union consultation would be required when (a) survey criteria are developed nationally, (b) survey criteria are developed locally, (c) the local plan for data collection is developed, and (d) the decision is made regarding specific salary determinations; and (3) protection from disclosure of information would be afforded pursuant to section 552 of title 5.

The major differences between the proposal in the Committee bill—which will be referred to as "competitive pay"—and the existing statutory authority for special rates include the following: (1) special rates are discretionary while competitive pay for RNs, RNAs, and CRNAs would be mandatory; (2) competitive-pay salary ranges would generally be determined by the individual facility director while special rates are approved by VACO; (3) competitive pay calls for salary ranges to be increased or decreased on an annual basis depending upon labor-market area rates; and (4) for competitive pay, a pre-established time would be established for review and adjustment of pay grades rather than waiting for a problem to arise as is the case with special rates. In the intervening year between routine competitive pay reviews and adjustments, special rates could still be implemented as needed.

Selection of comparable health-care facilities: The Committee bill would require directors of each VA health-care facility to perform an annual survey, no later than June 1, 1990—and on December 1, 1990, and each December 1 thereafter, of basic entry wages paid in comparable facilities within the labor-market areas which the directors identify as being the areas in which their competitors are located. The Committee recognizes that not all facilities within a labor-market area are necessarily competitors of VA health-care facilities. This is particulary true in large urban areas, and it also may be true in smaller and more rural areas. Generally, competition is dependent upon size, scope of services offered, type of patient, and complexity of care. However, other factors such as facility location, traffic patterns, and geographic characteristics of an area can also be variables.

Although the Committee believes that VACO has the responsibility to furnish guidelines to facility directors as to how competitors might be selected, it does not believe that VACO should issue hard and fast rules as to the method for making such a determination. Therefore, the Committee bill would require the Secretary to promulgate regulations which would provide maximum flexibility for individual facility directors to identify their competitors. If these regulations are not issued by April 1, 1990, facility directors, using their own criteria, would have the responsibility to establish and implement competitive pay for all RNs, and, is necessary, for other covered positions. It is also the Committee's intent that any determination made by a facility director would be made with the input of the individual facility chief nurse, in the case of RNs, or of the other service chiefs in the personnel categories affected.

The Committee bill provides that if a VA health-care facility is unique in its labor-market area, the salaries of other like health-care professionals performing similar tasks in other facilities within the labor-market area would be surveyed. An example of a facility without an easily identifiable competitor might be a VA facility located in a rural area which treats largely a long-term psychiatric patient population. In that instance, this measure would provide for a comparison to be made with other health-care facilities within the labor market area employing and competing for RNs.

There may be a rate instance where no competition can be found within a given labor-market area. The Committee bill would then require the facility director, with approval of an official designated by the Chief Medical Director, to utilize as a comparison a labor-market area with similar demographic characteristics that has a VA facility and to adopt that VA facility's competitive pay rates.

Interim authority to determine labor market area: It is the Committee's understanding that in certain labor market areas, nurses and other health-care professionals are commuting outside of the traditional labor-market area surrounding their health-care facilities in order to work in areas paying higher wages. This phenomenon further accentuates the scarcity of health-care workers in those areas from which they are departing. Under current special-rate regulations, a facility director is not able to expand his or her labor-market area to take this movement into account and is thus losing qualified employees to those higher paying areas. Under the proposed competitive-pay provision, facility directors would be given maximum flexibility to define the labor-market area with which they are competing; this flexibility should minimize the problem.

In order to provide the Secretary adequate time to develop comprehensive regulations, competitive-pay rates established pursuant to this provision would not become effective until July 1990, 9 months after the beginning of fiscal year 1990. However, to assist facilities which are in the position of competing with distant labor-market areas, a provision is included in the Committee bill to require facility directors in rural geographical locations, which are losing qualified nurses to higher paying labor-market areas, to carry out immediately the labor-market area survey described in this provision in determining whether they have a need to seek approval of special rates under ther current authority in 4107(g).

Determination of salary rates: It is the Committee's understanding that it is often difficult to obtain accurate information regarding salaries of health-care professionals, particularly those beyond the entry level. Several reasons for this exist. In some instances, pay policies within non-Federal systems permit wages to be individually negotiated with incoming employees, and in other instances the pay structure is based on different criteria than those utilized within VA.

However, it is the Committee's understanding that entry pay rates for new and lesser experienced professionals are generally more easily discoverable and compared than those for experienced professionals. Therefore, the Committee bill calls for determining entry-level salaries and then building grades and steps on those entry-level rates.

To avoid salary compression within a grade or between grades, this measure would require that the rates of pay for grades and steps that are established maintain the same proportional distribution between the rates of steps and grades that currently exists. To maintain consistency within the pay system, the Committee bill would require the Chief Medical Director to prescribe the number of grades (but not less than three) and the number of steps within each grade. If a new grade is or additional steps within a grade are added by the Chief Medical Director, the new grade or step would be required to bear the same proportionate relationship to other grades or steps as current grades or steps bear to one another.

Currently, entry-level nurse salaries are considered to be at the level of Junior, Associate, and Full grades. This determination had been made by VA when establishing the nurse salary schedule. The Committee bill does not require that those specific grades be maintained. The Committee intends for the Secretary, upon the recommendation of the Chief Medical Director, to establish which grades will be considered to be entry-level.

The Committee is expecting a Congressionally-mandated VA study—originally due May 19, 1989, but delayed within VA—which is expected to describe the extent to which pay compression is occurring within VHS&RA. One type of pay compression occurs when the range between the pay of new employees and experienced employees is narrow. VA officials have told the Committee that compression is a major problem within the VA system and that this has led to retention of difficulties. Under the current system, when a special rate is approved, the entry rate for that grade is increased and the range of the grade is increased accordingly. Under the current system, when a new employee is hired, he or she is offered the new higher entry rate. However, the rate earned by experienced employees is not always adjusted upward proportionately when the special rate is approved; therefore, new employees may be hired at salary levels that it took considerable time for longer-term employees to attain. In contrast to this situation as to special rates, the Committee bill requires the rates of employees within specific steps of grades to increase when the range of the grade increases.

The Committee bill, as does the title 38 provision authorizing special rates, would require that the wage rates paid be competitive with the wage rate paid in the labor market surveyed but not exceed the highest such rate. This provision reflects the Committee's belief that the Federal government should not be the wage leader in a given community and thereby contribute to the increased inflationary impact of medical care. This philosophy is not intended to suggest that Federal employees are not of top quality but rather reflects the Committee's view of the special responsibility of the Federal Government not to generate inflationary pressures.

A major difference between the proposed competitive pay and the special-rate authority in specific regard to the manner in which salary ranges are to be determined is that this measure requires the facility director to take into consideration factors other than base salary rates. These factors include payment of premium pay and additional pay such as weekend, shift, and holiday differentials, and the value of other benefits such as the contribution of employers toward employee health insurance premiums. Additionally, the general availability of health-care professionals within the community and the difficultity of recruiting to a particular location within the community should be considered. These variables can have a significant impact upon the salary structure established and would require the facility director to utilize his or her judgment in determining rates. The Committee believes that strick formulas and other rigid directives could be counterproductive to the goal of establishing, in a timely manner, truly competitive salary schedules for VA employees.

It is the Committee's intent that VA, when implementing the competitive pay provision—such as identification of competitors, performance of the annual survey, and establishment of competitive pay—promulgate few specific regulations. In expressing this intent, the Committee does not downplay the importance of thorough and adequate justification of pay decisions; however, the Committee believes that the very intricate special-rate regulations have contributed substantially to the insufficiency and inefficiency of that system.

Limitation on entry-salary rates: The Committee bill would cap entry-level salaries of grades established primarily for supervisors and managers at the statutory cap of the Executive Schedule, currently $75,500, and would cap the entry-level salary of all other grades at the level of step 10 of grade 13 of the general schedule published by the Office of Personnel Management, currently $53,460. This provision is explicitly intended to place a cap on the authority of VA to increase salaries. Although the concept of competitive pay for health-care professionals is one the Committee firmly believes in, this new program must be carried out in a way that is consistent with overall Congressionally-defined Federal pay parameters.

Adjustments of salary rates: As a result of VA establishing salary rates on an annual basis in order to be competitive with community rates, salary ranges may also be adjusted downward. It is the Committee's view that the concept of competitive pay would be an inequitable one if it called only for increased salary rates to meet local standards and excluded decreases to reflect those same standards.

The Committee understands that salary rates dropped in the skilled labor market in Houston, Texas, when oil prices dropped. Additionally, in areas where VA is the salary leader by virtue of the Federal pay scale being naturally higher than that within the community, VA would be required to adjust its salary scale downward. In the event of such a downward adjustment, the Committee bill provides that the current wages of employees would not be affected by such an adjustment—basic salary rates of individuals already employed would remain the same until the community caught up with the Federal rate.

In a similar vein, employees transferring from one health-care facility to another would retain their same step and grade if they retained the same position with similar responsibilities at the second facility, but their earnings would reflect the specific salary attributed to that step and grade in the new facility. Hence, their salaries could increase or decrease. To permit employees to maintain their previous salary without taking into consideration local conditions would violate the integrity of the system.

Federal cost-of-living adjustment (COLA): At the Committee's May 18 hearing, several witnesses expressed concern that, under the bill as introduced, the COLA paid to other Federal employees would not be paid to those receiving competitive pay. For several years prior to January 1989, VHS&RA employees receiving special salary rates were not provided the COLA given to other Federal employees who were not receiving special rates. VA's explanation for this practice was that the purpose of a COLA is to provide Federal employees a salary comparable to that earned by employees in the non-federal sector, and because employees receiving special rates were earning salaries comparable to that in the community, there was no need also to give them the COLA. Employees, however, felt much differently about the issue. They believed they were not being furnished a salary increase to which they were otherwise entitled, and, as a result, morale deteriorated. In December 1988, VA reversed its position and authorized facility directors to pay the COLA to employees receiving special rates where local facility directors certified that such an increase was necessary to achieve adequate staffing or competitive pay. As a result, employees receiving special rates in all 172 facilities received the 1989 4.1-percent COLA provided to federal employees.

It is the intent of the Committee to prevent such employee morale problems from occurring in the future. Retention of staff is a function of paying employees a fair wage as well as furnishing employees recognition that their contribution to the organization is meaningful. Providing a COLA when other Federal workers receive the COLA is a method for doing both. However, the Committee also believes that the integrity of the proposed competitive-pay program must be maintained—that nurses and other covered employees should receive levels of pay which are competitive with but not exceeding the pay provided by employers offering similar employment and competing in the same labor-market area for qualified employees. Therefore, the Committee bill includes a provision which would provide that when making the determination as to what, if any, competitive-pay adjustment would be made, the Federal COLA would, in effect, be considered part of the base for the pay rate under review—that is, the COLA would be provided unless a facility director makes an affirmative finding that it is unnecessary for recruitment and retention purposes.

Union participation: At the Committee's May 18 hearing, the American Federation of Government Employees, the National Federation of Federal Employees, the National Association of Government Employees, and the American Nurses Association expressed their concern that no provision was made for employee input in the process used to establish competitive pay.

The Committee believes strongly in employee input and participation in matters which affect pay, benefits, working conditions and other aspects of their employment. Organizations which value employee input generally are more successful in recruiting and retaining qualified staff than those which do not provide opportunities for employee participation.

The Committee bill, therefore, includes a provision which would provide that, in those facilities where RNs, CRNAs, or other affected employees are covered by a collective bargaining agreement, union consultation would be required when (1) survey criteria are developed nationally, (2) survey criteria are developed locally, (3) a local plan for data collection is developed, and (4) a decision is made regarding specific salary determinations.

The Committee expects that when consulting with employee representatives, VA officials will provide sufficient time for input and response to VA proposals, disclose the information necessary to make an accurate determination of local salary levels, and, in good faith, take into consideration the views and suggestions of such employee representatives.

Protection of salary survey information: The ability of VA to collect valid and reliable salary information is the backbone of the competitive-pay provision in the Committee bill. Although this similar information is being collected currently to justify the need for special rates, as previously mentioned, this information is more difficult to obtain in some areas of the country than in others. In addition to those discussed earlier, other reasons for this difficulty include: (1) For competitive reasons, private sector hospitals are reluctant to divulge salary information on the theory that, if VA or other competitors are unaware of salaries, there is less chance that VA or the other facilities will match the salary and attract staff-from the organization which provided the salary information; and (2) organizations whose employees are not represented by unions do not want unions to have access to its salaries, fearing that such information might be used against them in a union organizing effort.

The provision that competitive-pay rates may not exceed those paid in the community should cause other facilities providing salary information to VA to be less concerned about VA using salary increases as a means to attract staff. However, in an effort to provide further assurances to those facilities regarding salary information they provide to VA, the Committee bill includes a provision which would protect salary information from disclosure pursuant to section 552 of title 5. This provision is designed to ensure that such information is used for the intended purpose and no other.

Section 552 of title 5, more commonly known as the "Freedom of Information Act" requires certain agency rules, opinions, orders, records, proceedings, and other items to be made available to the public. However, subsection (b) of that section provides an exclusion for certain documents, including "trade secrets and commercial or financial information obtained from a person and privileged or confidential" as well as information "specifically exempted from disclosure by statute * * * provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue * * *." Both of these provisions would be made expressly applicable to salary information obtained for the purpose of determining competitive-pay rates.

At the Committee's May 18 hearing, VA testified that it did not support the bill as introduced but found several positive features in it. Using pay grades and steps within grades to establish the salary structure, adjusting pay to meet local market conditions, providing discretion to adjust the pay of other health-care personnel in addition to nurses, and some local wage surveying were all mentioned as falling into that category. The provisions specifying the frequency of each local survey and establishing certain reporting requirements were the principal provisions in the bill that VA found objectionable. VA's general position was that the legislation should be deferred until VA presents its recommendations in the Fall derived from the VA Nurse Pay Task Force. The Committee does not believe it would be wise or prudent to put off action in this vitally important area so essential to maintaining the quality of care in VA health-care facilities. Moreover, in response to questions from Chairman Cranston, Chief Medical Director Gronvall testified that the provisions in the Committee bill were "consistent" with the recommendations of the VHS&RA task force to that point.

Cost: According to CBO, until the first set of surveys is conducted, the cost of enactment of section 251 cannot be estimated. CBO notes, however, that the cost "is not expected to be large, because the VA already pays special salary rates to nurses in 138 facilities in order to compete in their local hiring markets." (sic)

Employment of Personnel Trained by the Department of Veterans Affairs

Section 252 of the Committee bill, which is identical to the provisions of section 401 to S. 947, which in turn is identical to the provisions of section 621 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would amend section 4106 of title 38 to authorize VA to hire, without regard to the Civil Service examination and register processes, VA-trained health-care professionals—other than physicians, dentists, and nurses—during the first year after their graduation.

Background

As part of VA's mission to establish and implement education and training programs for health-care disciplines, VA health-care facilities provide training opportunities for tens of thousands of students each year—over 95,000 students in 1987. At the time of graduation, many of these students turn to VA as a potential employer. Persons in those professions who are not covered under VA's title 38 appointment authority—generally, health-care personnel other than registered nurses, physicians, and dentists—are required to complete the time-consuming process of examinations and register listings prescribed for the Civil Service competitive system. This process justifiably focuses on the preservation of merit principles for filling vacancies rather than on the need to appoint much-needed health-care personnel in an expedited fashion. Unfortunately, this often results in graduates, whom VA would like to employ, seeking and accepting employment elsewhere.

The shortage of health-care professionals has created a competitive environment in which hospitals and other health-related employers are actively recruiting capable employees. Private-sector employers are offering potential applicants immediate employment with very attractive salaries and benefits. VA, as previously noted, is having difficulty keeping up in these latter areas and the complex, lengthy Civil Service application and acceptance process adds to VA's problems in recruiting personnel. A 1986 VA study found that fewer than 6 percent of students take jobs with the VA facility where they received their clinical training. There is no reason to believe that these figures have increased in the intervening years.

Committee bill

Section 252 of the Committee bill would amend section 4106 of title 38 so as to add a new subsection (h) which would authorize the Secretary to appoint recent graduates with a recognized degree or certificate from an accredited institution in a health-care profession or occupation who received their clinical training at VA facilities to positions at those facilities without regard to the Civil Service examination and register processes.

In proposing this new authority, neither the Committee nor the Department intends that principles of the merit process—or of veterans' preference—be ignored, nor do they intend that other screening procedures to ensure the hiring of a high quality of personnel be bypassed. However, because these graduates have completed a course of education with a practicuum at a VA health-care facility, supervisory personnel at VA will have had an opportunity to assess and evaluate their work in a clinical setting, and thus can be expected to know far more about these applicants' clinical competencies than they do about other applicants.

A further benefit to VA from hiring persons who have been recent students in VA facilities is the savings in recruitment and orientation costs, which can amount to several thousand dollars per employee.

Cost: According to CBO, the enactment of section 252 would entail no significant costs.

Director Pay

Section 253 of the Committee bill, which is identical to the provisions of section 4 of S. 1004, would amend section 4107(b)(2) of title 38 to authorize VA to use the Director grade for physicians and dentists assigned to Central Office if the position is comparable to the position of a medical center director.

Under current law, section 4107(b)(2) of title 38 prohibits VHS&RA from using the Director grade under the "Physicians and Dentist Schedule" in section 4107(b)(1) for anyone other than the director of a VA medical center or independent outpatient clinic. Because of this restriction, VA is prevented from using the Director grade as an option when it reassigns or promotes physicians or dentists to positions in VA Central Office. Currently, VA can give these physicians or dentists only the Executive or Medical Director grade. As a result, VA asserts that many physicians in Central Office are placed in the same grade as their direct supervisors.

In terms of salaries, the Director grade ranges from $67,038 to $82,500 and is comparable to the General Schedule grade GS-16. The Executive Grade—which is generally given to Chiefs of Staff at medical centers—ranges from $61,900 to $78,891 and falls between the General Schedule grades GS-15 and 16. The Medical Director grade ranges from $76,990 to $83,818 and is comparable to grade GS-17.

According to VA officials, enactment of this provision would permit increased flexibility by permitting VA to use any of the three grades and would not result in increased costs.

Cost: According to CBO, the enactment of section 253 would entail no significant costs.

Overtime Rates of Pay for Certain Nurses

Section 254 of the Committee bill, which is identical to the provisions of section 102 of S. 947, would amend section 4107(e)(5) of title 38 to require VA to pay overtime to RNs, RNAs, and CRNAs at the rate of one and one-half times their hourly rate of basic pay.

Background

Current law, section 4107(e)(5) of title 38, limits overtime pay for RNs, RNAs, and CRNAs to a rate not to exceed one and one-half times the hourly rate of basic pay for the minimum rate of the Intermediate grade of the Nurse Schedule, currently $13.87 per hour. As of March 31, 1989, of the 36,551 full-time, part-time and intermittent RNs working for VA—523 of whom are RNAs or CRNAs—23,934 (65 percent) were at the Intermediate grade or higher.

This current law provision was enacted in 1973 as part of Public Law 93-82, and was intended to establish a method for computing overtime payments that was similar to that used for General Schedule and Wage Board employees pursuant to title 5.

When nurses seek employment, they look at a total array of benefits offered by an organization, not only the basic pay. Because overtime work is a frequent occurrence in many health-care facilities, earnings which result from such work contribute significantly to a nurse's annual income and hence to job selection.

Committee bill

As previously discussed, VA is competing with non-Federal hospitals for scarce RNs, and those hospitals routinely pay one and one-half times a nurse's actual hourly rate of basic pay for overtime hours worked. VA's inability to match that practice can place VA at a significant disadvantage.

Additionally, because VA is often short of staff, nurses are frequently requested to volunteer to work overtime. Because of the current cap on overtime earnings, the Committee understands that many decline to do so. In those instances, some facilities are turning to temporary nurse agencies to supply them with adequate numbers of nursing staff. Not only do these agencies pay nurses more than VA pays its nurses, but these agencies charge an administrative fee to cover the services associated with procuring the nurse—costs which are, of course, passed on to VA. Moreover, these additional costs do not account for any additional cost impact on the VA system incurred due to a lack of efficiency or quality resulting from an agency nurse who is not familiar with VA policies and procedures. These costs—combined agency nurse salary, administrative fee, and incidental costs—frequently exceed the cost of paying VA nurses one and one-half times their rate of basic pay, and VA often is left having to rely on the services of a less experienced nurse.

Not taking into consideration savings which might result from increased overtime in lieu of decreased agency nurse usage, CBO estimates the FY 1990 costs of this provision would be $3 million in both BA and outlays. The Committee believes that paying nurses one and one-half times their hourly rate of basic pay is a cost-effective measure which would save money in the long term.

Cost: According to CBO, the enactment of section 254 would entail estimated costs of $3 million in both budget authority and outlays in FY 1990 and total estimated costs of $17 million in both budget authority and outlays in FYs 1990-1994.

Additional Pay for Head Nurses

Section 255 of the Committee bill, which is identical to the provisions of section 103 of S. 947, would amend section 4107(e) of title 38 to require the Secretary to provide a 6-percent pay differential to nurses appointed to head nurse positions or assigned to such positions in excess of 30 days and provide for this pay to be considered as basic pay for the purposes of determining other employment benefits. This differential would be payable only for the period of time that such nurse holds or fills the position of head nurse.

Background

Unlike most health-care organizations, VA pays RNs based on their credentials and performance rather than on the position they hold. Thus, in VA, a nurse working at the bedside has the potential to earn an amount equal to that of head nurses and supervisors. Although the December 1988 report of the HHS Secretary's Commission on Nursing referred to earlier recommended that health-care organizations develop pay scales that reflect different levels of nursing experience, performance, educational attainment, and demonstrated leadership, most private-sector facilities have not yet done so.

The head-nurse position is a key one in any hospital organization, and many would agree that it is one of the most difficult. The head nurse is responsible for a patient unit or ward, the organizational level at which the vast amount of direct patient care is furnished. The nurse in a head-nurse position is responsible not only for a number of nursing personnel working under his or her supervision, but is accountable for the quality of nursing care and the coordination of all care furnished by other professional services. These supervisors are "first-line" in the truest sense of the word, and they are frequently the only managers present to address problems confronting physicians, other clinical staff, and the many non-clinical hospital staff so essential to furnishing a high quality of patient care.

Because a nurse working at the bedside in VA can earn as much as a head nurse without assuming the additional administrative responsibilities, there is no financial incentive to assume that management role. The impact of this is illustrated in a recent survey of 172 VA medical centers which identified a growing vacancy rate for head nurses—18.5 percent in fiscal year 1986, 22.9 percent in fiscal year 1987, and 22.4 percent in fiscal year 1988.

Veteran service organizations, the ANA, and NOVA testified in support of this legislation at the Committee's May 18 hearing. VA testified in support of an additional 6-percent pay differential but opposed its being treated as basic pay for purposes of other benefits, such as retirement, citing current law, which does not treat any other form of premium pay in such a manner.

Committee bill

The Committee believes that the head-nurse position is a pivotal one if good quality patient care is to be provided to our Nation's veterans and that a financial incentive must be provided to attract nurses to such positions.

The proposed 6-percent pay differential to nurses appointed to the head-nurse position is based on the policy of VA to provide a two-step increase—approximately equivalent to 6 percent—in the case of a promotion. In recognition of those nurses assigned to a head-nurse position on an interim basis, the bill would provide that those assuming such a role temporarily but for a period in excess of 30 days also would receive that 6-percent differential. As of October 1, 1990, all special pay under section 4118 would be treated as additional compensation for retirement purposes and the bill would accord the same status to additional pay received by head nurses under this new provision in the bill.

Cost: According to CBO, the enactment of section 255 would entail estimated costs of $5 million in both budget authority and outlays in FY 1990 and total estimated costs of $27 million in both budget authority and outlays in FYs 1990–1994.

Pay Enhancements for Certain Health-Care Personnel

Section 256 of the Committee bill, which is similar to the provisions of section 8(a) of S. 574, would amend section 4107(f) of title 38 to authorize the Secretary to pay additional pay on the same basis as for RNs to those health-care personnel who are furnishing direct care to patients or services incident to direct patienty care.

Currently, section 4107(f) provides VA with the authority to pay on the same basis as RNs (as provided under 4107(e)), certain specified VA health-care professionals, if the Secretary determines it to be necessary for recruitment and retention purposes. Additional pay includes the following: evening-, night-, weekend-, and holiday-shift differential, overtime, and on-call pay. Specifically, the Secretary may pay on such basis only certified or registered respiratory therapists, physical therapists, licensed practical or vocational nurses, pharmacists and occupational therapists, and do so, as for RNs, on a nationwide, geographic, or local basis.

S. 574 would have provided the new authority only for nursing assistants. The provision was expanded in the Committee bill, in view of the recruitment and retention problems in various categories of health-care workers, to provide the Secretary with maximum flexibility to use this additional pay authority for all direct and incident-to-direct patient-care providers.

Cost: According to CBO, enactment of section 256 would entail no significant costs.

Special Salary Rates for Health-Care Employees

Section 257(a) of the Committee bill, which is identical to the provisions of section 105 of S. 947, which in turn is identical to the provisions of section 622 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would increase the cap on special salary rates to provide the authority for such rates to be two times the difference between the minimum and maximum of the grade and require the Secretary to notify the two Committees on Veterans' Affairs when the level as increased becomes 94 (or more) percent of the maximum amount permitted.

Background

The majority of RNs in VA fall within one of four grades—Junior, Associate, Full, or Intermediate—each grade having nine primary steps. The salary increments from one step to the next are approximately 3 percent. At one time, the first step within the grade was considered the entry level. However, as the nurse shortage has become more acute and as the competition for nurse services has become keener, nurse salaries in non-Federal hospitals have increased. However, under current law, salaries of VA employees on special rates are limited to a rate which may not exceed the amount by which the maximum for the particular grade exceeds the minimum for that grade.

To remain competitive and maintain the ability to recruit and retain nurses, VA has had to advance starting salaries so that today, in the Boston, New York, San Francisco, and Los Angeles areas, the starting salary for Junior grade nurses is at the maximum amount authorized by law for that grade—a difference of $10,530 from the theoretical "entry level" first step. The maximum has also been reached in the Boston area for Associate grade nurses. In San Francisco, the starting salary for Associate grade nurses is very close to the maximum, and it is expected that salaries will quickly reach that point.

In addition, salaries for pharmacists in the Los Angeles area are at the maximum allowable by law, and those in San Francisco, Northport, and New York City are near the maximum. The Committee also understands that salary rates in New York City for Junior grade nurses reached the maximum authorized by law on or before February 28, 1988; in San Francisco on March 27, 1988; and in Los Angeles on June 23, 1988.

Committee bill

Section 257(a) of the Committee bill would amend section 4107(g)(3) of title 38 to ensure that VA has the ability to increase salaries of its nurses and other title 38 or "hybrid" health professionals so as to continue to remain competitive in the health-care personnel market. To this end, the Committee bill would raise the limit on special salary rates so that the increase would be up to twice the difference—rather than just the difference—between the maximum and the minimum for the grade involved and would require the Secretary to notify the Committee when such an increase is 94 or more percent of the maximum amount permitted. This should provide the Congress with the forewarning necessary to consider the need for new legislation in a timely manner.

Although the implementation of competitive pay provided for in section 251 of the Committee bill (described above) would greatly reduce VA's need for special salary rates, that need would not be eliminated totally. In today's fast-paced recruitment marketplace, wages for RNs might move ahead rapidly in the middle of the year, making an additional adjustment necessary or, for those employee categories for whom competitive pay is authorized but not required, the continuation of special rates as currently implemented would certainly be necessary if competitive pay is not implemented for them. Thus, it is important to ensure that the mechanism under which special rates are paid is maintained and improved as necessary. Because VA would need adequate time to promulgate regulations implementing competitive pay and the provisions in section 251 of the Committee bill would thus not be effective until July 1, 1990, this improvement in special rate authority would also be needed with respect to the hiring and retaining of RNs during the interim period.

Cost: In its cost estimate on the Committee bill, CBO noted that there are only around 160 nurses in 15 facilities who are being paid at maximum special pay rates, and stated:

> Since some of the 15 facilities may not need an increase by July 1990, it is not expected that section 257 would generate a cost of more than $500,000. If, however, a substantial number of other facilities reach the ceiling and need to exceed it before next July, the cost of this section could run over $1 million.

Approval of Special Rates of Pay

Section 257(b) of the Committee bill, which is identical to the provisions of section 105(b) of S. 947, which in turn is identical to the provisions of section 622 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would amend section 4107(g)(4) of title 38 so as to (1) reduce, from 90 to 45 days, the period, after VA submission of a title 5 health-care employees' special-pay rate request, in which the President or his designee may disapprove the proposed rate, and (2) clarify that the proposed rate may be put into effect immediately upon approval given in a shorter period.

Under current law, when the Secretary determines it to be necessary in order to recruit or retain the services of certain personnel employed under the title 5 personnel system who provide direct patient-care services or services incident to direct patient care, the Secretary may increase the rates of basic pay authorized under applicable statutes and regulations. In such cases, the Secretary is required to notify the President not less than 90 days prior to the effective date of the proposed increase. The President then has that 90-day period to disapprove the proposed increase and, if so doing, the President must notify the appropriate committees of the Congress of the reasons for such action.

Requests to establish special pay rates are initiated at VA Medical Centers and are submitted to VA Central Office (VACO). Such a request would include data showing that an increased rate is necessary to deal with an inordinately high vacancy or turnover rate for a particular category of personnel and that the increase is necessary either to provide pay in an amount competitive with—but not exceeding—the pay of the same category of personnel at non-Federal facilities in the same labor market, to achieve adequate staffing, or to recruit personnel with specialized skills. The gathering of such data and the development of a persuasive document for VACO review takes one month or longer. Once submitted to VACO, the justification for the special rates is carefully reviewed and either approved, returned for further information, or disapproved. According to a VA survey of 42 cases in which rates became effective in May 1988, the lag time between VACO receipt and approval ranged from 17 to 138 days, with both the median and mean being 52 days.

A review conducted by the Director of VA's Office of Personnel and Labor Relations at the Committee's request showed that between January 31, 1989, and June 30, 1989, 189 special-rate authorizations were subject to review by the President's designee, the Director of the Office of Personnel Management (OPM). The average turnaround time on these authorizations was 86 days at VACO, followed by an average turnaround time of 25 days at OPM. According to VA, OPM has never disapproved any special-rate authorization proposed by VA under section 4107(g).

The Committee is concerned that the lengthy pre-approval process—during which time the VA facility is already experiencing a staffing shortage—may serve to worsen the staffing problem. Staff may become overworked and frustrated and thus seek to leave the organization. This, of course, creates an even greater shortage which may cause the care furnished veterans to suffer.

Cost: According to CBO, the enactment of section 257(b) would entail no significant costs.

Elimination of Reduction in Retired or Retainer Pay

Section 258 of the Committee bill, which is substantively identical to the provisions of section 104 of S. 947, would amend section 4107(i) of title 38 to expand the Secretary's authority to make an exception to the title 5 provision reducing the amount of retirement or retainer pay of officers who have retired from the uniformed services who are then employed by the Federal Government—now limited to physicians—to include other VHS&RA employees where necessary to meet special or emergency VA employment needs which result from a severe shortage of well-qualified candidates. A related provision was contained in section 8(b) of S. 574.

Background

Pursuant to section 5532 of title 5, following appointment to a civil service position, the retirement pay of a retired officer who served in the uniformed services is reduced to an amount equal to $7,698.51 plus half the remainder of his or her retired pay, increased proportionately by the amount of Consumer Price Index increases. This provision originally was enacted to prevent the practice know as "double dipping" under which retired Armed Services personnel not only received their earned retirement pay in full but also held another full-time position and earned full-time pay.

In 1984, section 109 of Public Law 98-528 provided the VA Administrator authority to make an exception to these title 5 provisions "if necessary to meet special or emergency employment needs which result from a severe shortage of well-qualified candidates in physician positions which otherwise cannot be readily met." VA has used this authority 23 times.

At the Committee's May 18 hearing, VA testified that it strongly favored enactment of this change. Other witnesses also testified in support of this provision.

Committee bill

The number of non-physician health-care professionals retired from the Armed Forces who would fall into the category of "scarce"—RNs, physical thereapists, pharmacists, occupational therapists, and others as determined by VA—is difficult to determine, and the number of those who would want to continue their careers within the Federal Government is equally difficult to ascertain. However, the Committee notes that, for those Armed Services health-care personnel who would wish to continue their careers outside the uniformed service, VHS&RA would be a natural environment in which they might work. The VA patient population, while older, has a common bond with that found in military hospitals. Also, the military careerist is familiar with Federal policies and procedures and, therefore, likely would be comfortable in the VA environment. According to VA, although the currently-authorized physician exception has been exercised infrequently and prudently, it has been helpful in recruiting qualified physicians in a variety of special shortage situations. In other retired Armed Services health-care professionals could be attracted to work within VA in scarce positions, the cost associated with vacant positions might decrease.

Cost: According to CBO, the enactment of section 258 would entail no significant costs.

Awards for Recertification

Section 259 of the Committee bill, which is substantively identical to section 106 of S. 947, would amend section 4107 of title 38 so as to add a new subsection (k) to require the Secretary to award each nurse, upon recertification in a specialty, an amount equal to one percent of the nurse's annual basic rate of pay if the nurse is employed in the clinical specialty in which he or she is certified and if the most recent performance evaluation of the nurse was not less than satisfactory.

Background

Certification, unlike licensure, is not a requirement for nursing practice. It is a credential which is pursued by those professionals who strive for excellence and recognition in their field. To become certified, a nurse must take a difficult written examination which tests knowledge and the ability to apply that knowledge in a certain subject area. To become recertified, nurses generally must prove—every two to four years depending upon the specialty area—that they have continued to practice in their specialty area, attended continuing education programs, and, in several instances, shared their knowledge with others through teaching.

Currently, VA nurses in Senior grade or below may receive a one- to five-step increase in rate of pay on the basis of professional achievement if they have demonstrated excellence in performance and have a potential for assuming greater responsibility. One way professional achievement can be demonstrated is by becoming certified by an appropriate national certifying body.

It is the Committee's understanding that most VA nurses receive at least a one-step—3.3-percent—increase upon certification. However, at present, no economic incentive is provided for recertification.

All witnesses testifying at the Committee's May 18 hearing supported this provision, except for VA, which expressed the view that this measure would not provide a significant additional recruitment or retention incentive.

Committee bill

The Committee wants to ensure that a special effort is made to encourage and retain those nurses who have taken the time and made the effort to take the additional step of achieving recertification and thereby demonstrating a higher level of knowledge. The Committee bill would require that upon recertification each nurse would receive a lump-sum amount equal to one percent of his or her annual salary as long as the nurse is certified and becomes recertified in the specialty in which he or she is working and that the nurse's last performance review did not result in a less than satisfactory rating.

A continued objection raised by nurses is that they are not recognized for their contribution to the health-care team. Although basic pay must be competitive in order to attract and retain qualified registered nurses, the literature suggests that other forms of recognition can and should be employed as well. Additionally, funds spent in providing such recognition may be more cost-effective than expending those funds on advertising and other recruitment or personnel or orientation costs. The Committee believes that recertification is just one of those ways in which nurses can be recognized without incurring great costs.

Cost: According to CBO, the lack of data on the number of VA nurses receiving recertification each year precludes the making of a reliable estimate of section 259.

Labor-Management Relations

Sections 260 and 261 of the Committee bill, which are identical to sections 223 and 224 of S. 13 as introduced, which in turn are derived from section 627 of S. 2011 as reported by the Committee last year and passed by the Senate on October 18, 1988, in H.R. 4741, address labor-management issues within VA. These sections would, first, ensure that title 38 employees are afforded the same labor-management rights as other government employees currently enjoy under chapter 71 of title 5, United States Code, and, second, recognize the professional nature of those employees by creating a hybrid procedure for resolving specified lesser disciplinary actions and grievances involving title 38 employees.

Background

This year, and in 1987 and 1988, beginning with the Committee's May 21, 1987, hearing on various measures dealing with the VA health-care system and in subsequent activity both in follow-up to that hearing and in connection with the Committee's April 28, 1988, hearing, the Committee has heard from a variety of sources about problems in VA's personnel system as it relates to title 38 employees—physicians, dentists, nurses, optometrists, podiatrists, physicians' assistants, and expanded-function dental auxiliaries. These concerns were reiterated during the Committee's May 18 hearing.

For the past two years, both VA and witnesses representing employee groups have raised concerns about the current procedures under section 4110 of title 38 (the provision under which disciplinary actions involving title 38 employees are carried out), the fair-ness and timeliness of the overall title 38 personnel system—especially in contrast to the system under title 5 which applies to other Federal employees, including other VA employees not covered by the title 38 system—and the ongoing, costly, and time-consuming litigation over issues relating to the relationship between title 5 and title 38 provisions.

As was discussed in detail in the Committee's report accompanying two bills reported by the Committee and considered by the Senate in the last Congress—S. 9 (S. Rept. 100-215, pages 145-150) and S. 2011 (S. Rept. 100-439, pages 164-167)—the key issue underlying this matter is the relationship between the VA personnel system under title 38 and the general civil service system under title 5.

When VA's Department of Medicine and Surgery (now Veterans Health and Research Services Administration) was established in 1946, the Congress created the separate VA personnel system, distinct from the general civil service system, in order to provide VA with greater flexibility in recruiting and employing health-care professionals. It was the view at that time that the civil service system was too cumbersome to permit the timely hiring that was felt to be necessary in order to enable VA to meet the health-care needs of the returning World War II veterans and also that the other attributes of the civil service system were not compatible with running a large health-care organization. The elements of this system, which are set out in chapter 73 of title 38, United States Code, and in regulations and guidelines issued by VA, have generally served the purpose of enabling VA to employ needed health-care professionals to operate its health-care system.

Among the areas addressed in chapter 73 are those relating to employer/employee relations, such as those involving terms and conditions of employment (including how employee grievances over such terms and conditions are resolved) and disciplinary procedures. Specifically, current section 4108(a) gives the Secretary exclusive authority over the conditions of employment of title 38 personnel "[n]otwithstanding any law, Executive order, or regulation", and current section 4110 sets out the process by which disciplinary actions involving title 38 employees are to be conducted.

Many of these provisions date back to 1946 and, although there have been many significant changes in employee relations in the intervening years—most especially, the enactment in 1978 of the Civil Service Reform Act (CSRA), Public Law 95-454—VA authorities and practices have remained largely unchanged.

Meanwhile in the 1978 CSRA, other federal employees gained significant new rights to negotiate with regard to the terms and conditions of their employment and to utilize new methods to resolve grievances, including negotiated grievance procedures and binding arbitration. Title 38 employees, by way of contrast, remain limited, under the U.S. Court of Appeals decision in the *Colorado Nurses* case, discussed below, by section 4108 to whatever rights the Secretary of Veterans Affairs is willing to accord to them and have been unable to negotiate grievance procedures comparable to those available to other federal employees. Likewise, under section 4110, all disciplinary actions involving title 38 employees, however minor, must be heard by a disciplinary board of 3 to 5 largely peer employees, a trial-like adversarial process that frequently takes many months to reach a resolution and from which the only appeal available is in an internal VA action, with no recourse to outside judgment except in a court action. Civil service employees, on the other hand, have various methods for contesting disciplinary actions, both within and outside of their particular departments or agencies.

As is described in detail in the Committee report accompanying S. 9 (*id.* at 141–150), challenges have been brought in recent years, including by the American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE), to the legality, in light of the enactment of CSRA, certain aspects, provided by VA, of the title 38 separate VA personnel system, particularly to those relating to the resolution of employee grievances and disciplinary actions. These challenges have been based on the theory that CSRA established government-wide procedures in the area of labor-management relations and, in so doing, superceded VA-specific laws. Although this legal theory was accepted in some cases before the Federal Labor Relations Authority (FLRA) involving VA disciplinary procedures in which the FLRA ruled that VA was obligated to adhere to CSRA procedures, these results were reversed on appeal to federal appellate courts.

In July, 1988, the U.S. Court of Appeals for the District of Columbia Circuit, in the case *Colorado Nurses Association and VA Medical Center, Ft. Lyon, Colorado,* v. *Federal Labor Relations Authority,* 851 F.2d 1486 (D.C. Cir. 1988), reversed a prior decision of the FLRA which held that VA has a duty under the CSRA to bargain over conditions of employment for title 38 employees. The court ruled that the VA Administrator (now Secretary) has exclusive discretion to establish regulations concerning the working conditions of those employees appointed under the title 38 personnel system and is, therefore, not under any obligation to bargain with such employees based on the CSRA.

In response to the concerns raised at the 1987 hearing and in follow-up activity, the Committee reported and the Senate in 1987 passed section 324 of S. 9. Despite the good intentions of all those involved in that effort, it was not possible to develop an approach that was satisfactory both to VA and the employee organizations, and ultimately the decision was made, in conferring with the House, not to include any provisions on this subject in the legislation that ultimately was enacted as Public Law 100–322. However, because the Committee remained interested in trying to resolve the problems that were identified in 1987 in the current DM&S disciplinary and grievance processes and procedures relating to title 38 employees, on August 1, 1988, the Committee—and on October 18 the Senate—again voted its support for these provisions, as set forth in section 627 of S. 2011. Then, following the court's decision in *Colorado Nurses,* the Senate adopted, in a floor amendment on October 18, a provision which would have maintained the *status quo* while the parties negotiated a permanent resolution of the issues involved. Unfortunately, neither of these provisions was included in the legislation that ultimately was enacted as Public Law 100–687.

The effort to develop the provisions in the Senate-passed measures in 1987, 1988, and again in sections 260 and 261 of this bill, which have included significant consultation with many concerned parties, has been carried out with two fundamental, and sometimes conflicting, principles in mind. These are, first, that the separate title 38 personnel system for VHS&RA generally serves a valid and valuable purpose of permitting the VA to staff and manage a very large, complex, health-care system and, as such, should be maintained; and, second, that as the Congress recognized with the enactment of the CSRA, there can and should generally be significant opportunity for employees to have disciplinary actions and grievances related to their employment resolved in a timely fashion with an opportunity for outside review.

The need for these provisions is essentially twofold: To ensure that title 38 employees are afforded the same fundamental rights as other government employees in terms of their employee-management relations, while protecting the special professional nature of title 38 employment; and to provide VA with an important tool in its ongoing efforts to recruit and retain qualified health-care personnel.

Since the time when the current system was developed, the types of personnel procedures set forth in title 5 have become the norm in labor-management relations. In fact, until the *Colorado Nurses* decision, VA generally opted to follow those procedures. However, reports of the abandonment of those procedures at various VA medical centers, which the VA can do in its discretion under the current law as construed in *Colorado Nurses*, are beginning to surface. For example, at the May 18, 1989, Committee hearing, Ms. Marie Winslow, representing the NFFE, testified that management at the Northport, New York, VAMC had refused to bargain with employee representatives over working conditions.

Committee bill

Section 260 of the Committee bill would make chapter 71 of title 5 applicable to the Secretary's authority under section 4108(a), except with respect to the prohibitions set out in paragraphs (1) through (6) of that section, which pertain to potential conflict-of-interest situations arising in the context of health care, and section 4110, which would be amended by section 261 of the Committee bill to set forth a title 38-specific process for resolving lesser disciplinary matters involving title 38 employees who are members of a recognized bargaining unit. This section also protects and preserves the uniqueness of the title 38 system where it is most necessary—where the quality of care may be at issue—by making exceptions for conflict-of-interest matters and by adding the new procedures in section 261, including provisions which address specifically how matters involving quality-of-care issues are to be resolved.

Section 261 of the bill would amend section 4110 of title 38 to remove from the coverage of that section disciplinary actions involving lesser proposed penalties—specified as suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment. All other disciplinary actions would remain covered by the current section 4110 process.

This approach, of specifying those matters which would be excluded from coverage, was adopted so as to be clear that any matters not specified would remain covered by section 4108 and 4110. For example, because of the current VA practice of treating any proposal to remove a title 38 employee's clinical privileges as the same as one involving a proposed removal under the bill, current 4110 procedures would continue to apply in such clinical-privilege cases.

For the disciplinary matters specified in section 261 that involve lesser proposed penalties, this section would provide that a title 38 employee would be entitled, in lieu of a 4110 proceeding, to a process which would include (1) advance written notice setting forth the specific reasons for the proposed action; (2) a reasonable time to answer the notice, either in writing or orally, including time to furnish affidavits and other documentary evidence in support of the answer; (3) a chance to be represented by an attorney or some other representative; and (4) a written decision, including the reasons for the decision, at the earliest practicable time. These procedures are generally the same as are provided, pursuant to section 7503(b) of title 5, to all title 5 employees in such disciplinary proceedings.

Section 261 also would provide two methods by which title 38 employees—depending on whether they belong to recognized bargaining units or not—could gain a review of a decision on such a specified lesser disciplinary matter or of a decision on a grievance. These methods, which are parallel to the procedures available to title 5 employees, are either, for those title 38 employees who are not members of bargaining units, an agency review procedure established by the Secretary or, for those employees who are members of such a unit, a negotiated grievance procedure which would include binding arbitration.

In order to deal most appropriately with matters involving quality of care, in any disciplinary case involving binding arbitration, if the subject matter of the disciplinary action should involve a question of the employee's clinical competence, as determined by either party, the person selected under the negotiated agreement to arbitrate the case would have to be qualified as an arbitrator and also be qualified as a physician, dentist, nurse, or otherwise qualified, by specialize experience or training or both, in examining and adjudicating health care issues. Appeals from an arbitrator's decision would be authorized to be taken to the FLRA.

Section 261 also would provide that any agency review procedure established by the Secretary with respect to proposed disciplinary actions and grievance resolution regarding title 38 employees who are not covered by collective bargaining agreements would have to include (1) an informal review of the decision on the disciplinary action by a VA official of a higher level than the official who made the original decision and a prompt decision following that review; (2) a right to have the matter reviewed further by an impartial examiner from within VA who would have to submit a prompt report of findings and recommendations; and (3) a prompt review of those finding and recommendations, as well as any comments the employee or the department or both wishes to make on the findings and recommendations, by a department official at a higher level than the one who carried out the first informal review. These procedures are generally similar to ones currently provided by VA through internal agency guidelines for title 5 and title 38 employees.

The Committee believes that the changes of the nature proposed in sections 260 and 261 in labor-management relations involving VA and its critical title 38 health-care personnel would serve to improve the overall work environment in the VA health-care system and make VA employement an attractive option for health-care personnel.

The Committee recognizes, however, that the provisions contained in sections 260 and 261 are not fully acceptable at this point to any of the parties involved and that the provisions will undoubtedly change as the Committee continues its efforts to achieve a consensus among the parties on both sets of provisions as thy move through the legislative process.

Cost: CBO estimates that enactment of sections 260 and 261 would entail no significant costs.

Leave Transfers and Banks

Section 262 of the Committee bill, which is identical to the provisions of section 203 of S. 947, would amend section 4108 of title 38 so as to add a new subsection (e) which would (1) require the Secretary to conduct, for 5 years, a leave-transfer program for medical emergencies of VA employees appointed pursuant to section 4108 of title 38, and (2) authorize the Secretary to establish and conduct a leave-bank program for medical emergencies of those same employees. A related provision was contained in S. 899.

Background

Public Law 100–566, the Federal Employees Leave Sharing Act of 1988, enacted on October 31, 1988, provides for a five-year, government-wide leave-sharing program for title 5 employees. This authority, subchapter III of chapter 63 of title 5, requires the Office of Personnel Management to establish a program under which annual leave accrued or accumulated by a Federal employee may be transferred to the annual leave account of any other employee for the purpose of assisting the receiving employee during a time of medical emergency. Subchapter IV of chapter 63 also requires OPM to establish during the 5-year period a leave-bank demonstration project under which employees may voluntarily transfer annual leave to a leave bank from which annual leave may be made available to an employee needing such leave because of a medical emergency. Although earlier laws authorized testing such programs for title 38 employees, those provisions will expire on September 30, 1989.

VA submitted legislation having a similar purpose, which was introduced as S. 899 on Tuesday, May 2, at the Secretary's request. That provision would provide the Secretary with the authority to establish a leave-sharing program involving leave transfers for medical emergencies as authorized by the title 5 provisions. At the Committee's May 18, 1989, hearing, VA testified in favor of its proposal. Other organizations testifying at that hearing spoke in support of leave sharing generally and did not specifically support either measure.

Committee bill

Section 262 of the Committee bill would require the Secretary to establish, or enter into an agreement with OPM to participate in, a leave-transfer program for health-care professionals employed under title 38 such as that provided for in title 5, and provide the Secretary the authority to establish, or enter into an agreement with OPM to participate in leave banks for these health-care employees.

The Committee believes that leave sharing is a very helpful and humane means of assisting employees during difficult personal times. Additionally, because many employees do not have the necessary accumulated leave to see them through these crises, they frequently are forced to resign or take leave without pay.

Leave sharing would assist with recruitment and retention by providing an economical mechanism to retain qualified personnel. Leave transfer has been tested by OPM and found to be administratively feasible and successful; therefore, the Committee believes VA should be required to establish such a program. The leave-bank concept is very intriguing but has not been as extensively tested. Therefore, the Committee bill would only authorize rather than require such a program.

Cost: According to CBO, the enactment of section 262 would entail estimated costs of $2 million in both budget authority and outlays in FY 1990 and total estimated costs of $10 million in both budget authority and outlays in FYs 1990–1994.

Temporary Appointments of Health-Care Personnel

Section 263 of the Committee bill, which is similar to the provisions of section 5 of S. 1004, would (1) amend section 4114(a)(3)(A) of title 38 to authorize VA to extend for a period not to exceed 2 years, the temporary full-time appointment of RNs, certain psychologists, vocational or practical nurses, respiratory therapists, physical therapists, occupational therapists, and pharmacists, who have completed a full course of academic training approved by the Secretary and are awaiting licensure or certification, and (2) amend section 4113(a)(3)(C) of title 38 to authorize VA to extend for a period not to exceed the length of an academic program, the temporary appointment of a student pursuing a degree in physical therapy, occupation therapy, pharmacy, psychology, respiratory therapy, vocational or practical nursing, or professional nursing.

Currently, certain health-care professionals without certification or licensure can obtain only a one-year VA appointment within VHS&RA. According to VA, nearly all of such appointees receive permanent appointments under section 4103(3) once certification or licensure is obtained. However, Office of Personnel Management regulations do not permit employees with temporary appointments of a year or less to receive health benefits and life insurance. The authority proposed in the Committee bill would increase VA's ability to recruit and retain scarce health care personnel by permitting VA to appoint these professionals for longer than one year (up to two years), and thereby offer them health and life insurance benefits.

With regard to student appointments, current law limits such temporary appointments to one year. Therefore, many students are required to terminate employment before completing their academic training. Because they have not yet obtained a degree, they then are ineligible for appointment as probationary permanent employees. The Committee believes it is beneficial for VA to retain throughout their training periods students who maintain good academic standing and make efforts to keep them within the VA system. The provision in the Committee bill should assist VA in these efforts.

As introduced, these provisions would not have included RNs. The Committee bill would expand these proposed appointment authorities to include RNs.

Cost: According to CBO, enactment of section 263 would entail no significant costs.

Health-Care Professionals Cash Awards

Section 264 of the Committee bill, which is similar to the provisions of section 201 of S. 947, would amend subchapter I of chapter 73 so as to establish, effective September 1, 1990, a cash award program for title 38 employees.

Background

Currently, two provisions in title 5 provide for cash awards for either superior performance or accomplishment of supervisory or management officials within grades GS-13 through GS-15 of the General Schedule. Title 38 employees—physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries—are not eligible for these awards.

Section 5406 of title 5 requires the payment of performance awards to those employees who receive an outstanding rating during the performance review process. The amount of the award is limited to not less than 2 percent and not more than 10 percent of the employee's annual rate of basic pay. This cap may be increased up to 20 percent if the employee's performance is unusually outstanding. Using a very specific formula based on the amount of basic pay paid to employees and the number of employees eligible for the award, section 5406 also defines the minimum and maximum amounts that an agency may pay in performance awards of this type as not less than 1.15 percent and not more than 1.5 percent of aggregate basic pay for the employees eligible for the awards at that agency.

Section 5407 of title 5 authorizes an agency head to pay a cash award to (and other expenses incurred in connection with the honorary recognition of) an employee who "by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of government operations, or achieves a significant reduction in paperwork" or "performs a special act or service in the public interest in connection with or related to the employee's Federal employment." This section also authorizes the President to pay a cash award for similar purposes apart from or in conjunction with the agency head's award. The amount of these awards is limited to not more than $10,000 unless the employee's contribution is determined to be unusually meritorious and, in that instance, the award is limited to not more than $25,000. Those VHS&RA employees currently eligible for cash awards under section 5406 and 5407 include only those directors of clinical and non-clinical services who are not nurses, physicians, dentists or other title 38 employees listed in section 4104(1) of title 38, although the Committee has been advised that VA has been paying some cash awards under section 5407 to some title 38 employees.

As introduced, section 201 of S. 947, would have authorized the Secretary to make cash awards of no less than 5 percent and no greater than 20 percent of an employee's annual basic rate of pay to not more than 20 percent of the managers and supervisors of each of the professional groups identified in section 4104(1) of title 38—physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries—for exemplary performance as defined by criteria promulgated by the Secretary.

At the Committee's May 18 hearing, the VA witness stated that VA recognized that rewards for exemplary managerial or supervisory skills encourage continued exemplary performance. Additionally, VA said that extending such awards to others beyond managers and supervisors would encourage continued exemplary performance at the staff level.

Committee bill

The Committee believes that title 38 employees should be eligible for cash awards which recognize their significant contribution to the furnishing of good quality patient care. Therefore, section 264 of the Committee bill would amend subchapter I of chapter 73 so as to add a new section 4120A that would, effective September 1, 1990 (1) require that cash awards analogous to that required by section 5406 of title 5 be paid to title 38 supervisors and managers (including head nurses) who receive the highest proficiency rating possible, as determined under criteria promulgated by the Secretary, and authorize such awards for other title 38 employees; (2) require that such awards range from 2–10 percent of the employee's base annual salary but allow the award to be increased up to 20 percent if the employee's performance is unusually outstanding; (3) prescribe the aggregate amount paid for such awards in a manner identical to that prescribed in section 5406(c)(1) of title 5, which establishes the maximum total amount of cash awards as not more than 1.5 percent multiplied by the aggregate amount of basic pay payable to the covered employees in the agency and the minimum amount as not less than 1.15 percent multiplied by the aggregate amount of basic pay payable to the covered employees in the agency; and (4) require the Secretary to establish a cash award program identical to the program under section 5407 of title 5 (which provides for amounts up to $10,000, or, for outstanding performance, up to $25,000) for title 38 supervisors and managers in grades comparable to General Schedule grades 13–15 who, by their suggestion, invention, superior accomplishment, or other personal efforts, contribute significantly to the Federal government. As noted above under "Background", VA has been paying cash awards to some title 38 employees under section 5407, and this provision would provide express authority for such payments.

The Committee recommends strongly that the Secretary carefully monitor the recipients of awards each year under the new authorities to be certain that performance appraisals are not overrated so as to provide awards to employees not performing in a truly exemplary fashion.

Cost: According to CBO, the enactment of section 264 would entail no estimated costs in FY 1990 and total estimated costs of $117 million in budget authority and $116 million in outlays in FYs 1990-1994.

Dependent Care Assistance Program

Section 265 of the Committee bill, which is substantively identical to the provisions of section 202 of S. 947, would amend subchapter I of chapter 73 of title 38 so as to add new section 4120B to authorize the Secretary to establish and operate a program for the care of dependents of VHS&RA employees that meets the requirements of section 129 of the Internal Revenue Code (title 26).

Background

Section 129 of title 26 permits employees working in non-Federal organizations to contribute up to $5,000 annually tax free ($2,500 in the case of an individual who is married but who files a separate tax return) for the care of the employee's dependents. Under such a program, upon the request of the employee, an employer excludes from the employee's gross income specified amounts to be placed in an escrow account. The employee then draws upon this account for dependent-care costs. Just as amounts for 401(k) plans are treated for Federal income tax purposes, the amount so set aside is not reported to the Internal Revenue Service as part of the employee's earned wages, thus resulting in a reduction of the employee's income tax.

On March 19, 1987, a VHS&RA employee at the Long Beach, California, VAMC, Dr. David L. McArthur, submitted a suggestion through the VA Incentive Awards Program recommending that such a program be established in VA. This suggestion was referred to the VA General Counsel who sought guidance from OPM. In an October 5, 1988, memorandum from the VA General Counsel to the Director of VA's Office of Personnel and Labor Relations, the General Counsel advised that OPM stated that there was nothing under any title 5 provision which would permit a Federal agency to establish such a program; and VA General Counsel further indicated that VA did not have sufficient authority to establish such a program for title 38 employees.

Committee bill

The growing crisis in recruitment and retention of health-care personnel poses a threat to VA's capability of providing health care to our Nation's veterans. The Committee believes it is imperative that VA examine a wide range of employee benefits which may assist in resolving these problems. One such benefit certainly is assistance in the area of dependent care. Many employees have children or other dependents who need guidance and supervision while the responsible adult is working. Because such programs are increasingly found in the private sector, VA needs to offer benefits which are equally attractive. In addition to adjustments in salary to make VA a more attractive place to work, many creative, cost-effective approaches such as this must be developed.

Therefore, section 265 would authorize VA to establish and operate a dependent care assistance program for VHS&RA employees that meets the requirements of section 129 of title 26. This new authority would complement the authority enacted in Public Law 100-322 to require VHS&RA to establish child-care programs, as appropriate, at its medical centers and facilities under the auspices of the VA Canteen Service.

Cost: According to CBO, until the Secretary defines the dependent care assistance program, it is not possible to estimate the cost that would result from the enactment of section 265.

Health Professional Scholarships

Section 266 of the Committee bill, which is identical to the provisions of section 301 of S. 947, which is in turn identical to the provisions of section 623 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would amend section 4312(b)(5) of title 38 to require the Secretary to ensure an equitable allocation of scholarships to persons enrolled in their second year of a program leading to an associate degree in nursing.

Background

The Health Professional Scholarship Program was established by the enactment of Public Law 96-330, on August 26, 1980, to assist in the provision of an adequate supply of physicians and nurses for VA and the Nation and, if needed, of certain other health-care professions. As originally enacted, the legislation required VA to give priority in awarding scholarships to those individuals who had previously received scholarships under the Scholarship Program. These provisions remained unchanged until 1988.

Section 326 of S. 9 as reported by the Committee on November 6, 1987, and as subsequently amended and then enacted in the Senate-House conference report on H.R. 2616 (H. Rept. No. 100-578) required VA to give priority to the scholarship applications of individuals entering their final year in a course of training. This provision was enacted as section 216 of Public Law 100-322 on May 20, 1988. Although not explicitly set forth in the Explanatory Statement accompanying the conference report on H.R. 2616, as the Committee noted in its report on S. 2011 last year (S. Rept. No. 100-439), the conferees' intention was that the Scholarship Program be made available to students, particularly nursing students, enrolled in an Associate degree program.

Since the inception of the Scholarship Program, VA has awarded scholarships only to nursing students enrolled, or accepted for enrollment, in the "upper division", *i.e.,* their junior or senior year, of a Baccalaureate program or pursuing a course of education leading to a Master's degree in nursing. On May 12, 1988, Senators Cranston and Murkowski wrote to VA's Chief Medical Director (CMD) to encourage him to extend the nursing scholarship program to student nurses in the second year of an Associate degree program. The CMD, in a June 10, 1988, response, stated that, because of an overwhelming response to the scholarship program—over 1,600 applications for approximately 260 scholarships in 1988—VA was limiting scholarships to awards at the Baccalaureate and Master's degree level. In 1989, VA received over 1,500 applications for approximately 350 scholarships, but these awards still were limited to students in Baccalaureate and Master's degree programs.

At the Committee's May 18 hearing, only VA opposed this provision. VA claimed that it "currently has educational assistance programs which authorize support to candidates for associate degrees in nursing, making this provision unnecessary".

Committee bill

Section 266 of the Committee bill would require the Secretary to ensure that an equitable number of scholarships is awarded to students enrolled in an associate degree (AA) program leading to a nursing degree. The Committee is very concerned about the continuing shortage of nursing personnel, as discussed earlier in this report, and believes that all efforts should be made to recruit such personnel expeditiously. Although the Committee strongly supports baccalaureate education for nurses, particularly in today's complex health-care environment and, thus, believes that priority should be given to nurses working on completion of a Baccalaureate degree, the Committee recognizes that some communities do not have readily accessible 4-year programs. Persons in such areas who are interested in nursing as a career and are unable to attend school without some financial support would therefore be precluded from obtaining such VA assistance. The Committee believes VA should include AA nurses and hence has proposed in the Committee bill that an equitable allocation of scholarships to such students be required.

Cost: According to CBO, the enactment of section 266 would entail no significant costs.

Assistance to Health-Personnel Educational Institutions

Section 267 of the Committee bill, which is identical to the provisions of section 302 of S. 947, which in turn is similar to the provisions of section 624 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would (1) amend subchapter III of chapter 82 of title 38—relating to a program of VA grants to provide assistance in the education of allied health-care personnel, other than physicians and dentists, at VA-affiliated schools and to assist in developing and evaluating new health careers, interdisciplinary approaches, and career-advancement opportunities—to add a new section 5094 which would (1) authorize the appropriation of $5 million for each of fiscal years 1990 and 1991 and $6 million for each of fiscal years 1992 and 1993 for VA to reinstitute the program and provide for the funds to remain available until the end of the fifth year following the fiscal year for which they are appropriated; (2) amend section 5091 of title 38, describing the purposes of grants under the subchapter III program, so as to require that the development of those careers, approaches, and opportunities described above must occur in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved; and (3) amend section 5096 of title 38, relating to expenditures for certain VA health-personnel education purposes, to authorize VA to expend up to 10 percent of each year's appropriation under new section 5094 on VA programs (described in current section 5096(2)) designed to develop or initiate improved methods of education and training for health-care personnel.

Background

In response to a shortage of physicians and other health-care professionals in the early 1970's, chapter 82 of title 38 was enacted in Public Law 92-541. Subchapters I and II of this chapter authorized appropriations over a seven-year period (fiscal years 1973-79) for a pilot program of assistance in the establishment of 5 new State medical schools (subchapter I) and over a 10-year period (fiscal years 1973-82) for a program of grants to affiliated medical schools (subchapter II). These programs, which were designed to assist in the expansion and improvement of the Nation's capacity to train physicians, were generally successful. As a result of those efforts and others, it is generally believed that the United States has adequate numbers of physicans to meet its health-care needs.

Subchapter III of chapter 82—entitled "Assistance to Public and Nonprofit Institutions of Higher Learning, Hospitals and other Health Manpower Institutions Affiliated with the Veterans' Administration to Increase the Production of Professional and Other Health Personnel"—was designed to coordinate, improve, and expand the training of other health-care professionals and technical workers. Under this subchapter, 135 grants and 3 supplemental grants—totaling $47.9 million—were awarded during fiscal years 1974 through 1985 to universities, colleges, and other schools of higher learning and nonprofit health-personnel institutions affiliated with VA designed to coordinate, improve, and expand the training of health-care professionals and technical workers. Grants under this subchapter involved a broad range of professional disciplines, from physical therapy to nursing to medical record librarian; were made in 40 states, the District of Columbia, and Puerto Rico; and were regarded as successful in meeting their stated goals.

According to a December 1985 VA report entitled "Activities Carried Out Under the Veterans Administration Medical School Assistance and Health Manpower Training Act of 1972: Ninth Annual Report to the Congress of the United States", all but seven of the programs which received grant funds under subchapter III continued upon termination of the grant. One example of a continuing program, which was expanded to cover other nearby VA facilities, is a program conducted in cooperation with the Southern California College of Optometry. This grant permitted establishment of an optometric teaching/treatment unit at a VA outpatient facility. In the 1985 VA report, this program was described as very popular with both patients and staff and as providing services not previously available.

Through 1985, VA spent a total of $1.1 million under subchapter IV of chapter 82 which authorizes the use of up to 30 percent of the grant appropriations for the repair, remodeling, or expansion of VA facilities to provide for a suitable educational environment or for VA efforts to develop improved methods of health personnel training. Almost all of these funds were expanded on physical structures and equipment.

Serious shortages continue to exist in many categories of health-care personnel, and the numbers being trained are not sufficient. In 1986 there was a 13.4-percent decrease in nursing school enrollments over the previous two academic years. The trend in nursing school enrollments between 1986 and 1987 showed a further decline. Overall, there was a 6-percent decrease in nursing school enrollments over this period, with a 9.8-percent decrease in programs leading to a Bachelor of Science degree; a 1-percent drop in programs leading to an Associate degree; and a 20-percent drop in diploma enrollments. From 1987 to 1988, this trend slowed to under a 2-percent decrease in nursing school enrollments. However, the shortage of nurses is still severe. Additionally, programs leading to other health-care careers are experiencing similar declines.

Several schools of nursing have successfully implemented creative methods for increasing enrollments, but they need further funding either to expand their programs or to lower costs so that more persons can take advantage of them. For example, the University of San Franscisco School of Nursing has a 15-month program under which a student with a bachelor's degree in a field other than nursing can earn a Bachelor of Science degree in nursing. "Second-career" students such as these frequently have families or other responsibilities which prevent them from being able to afford the tuition fees and other costs involved in returning to school.

At the Committee's June 16, 1988, hearing, favorable testimony was received in support of section 624 of S. 2011. Representatives of nursing organizations—including the Nursing Association of VA and the American Nurses Association—endorsed the concept, but cautioned against the creation of new levels of health-care workers which might provide duplicative and costly services. At the Committee's May 18, 1989, hearing, section 302 of S. 947 received general support, except from VA. VA testified that overall concept has merit, but that this proposal does not have sufficient priority to warrant funding at this time.

Committee bill

Section 267 of the Committee bill would (1) authorize the appropriation of $5 million for each of fiscal years 1990 and 1991 and $6 million for each of fiscal years 1992 and 1993 for the purposes described in subchapter III of chapter 82 of title 38, (2) direct the Secretary, when establishing new careers, interdisciplinary approaches, and career advancement opportunities, to collaborate with the professions the members of which are currently responsible for carrying out those duties, (3) require that sums appropriated remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated, and (4) authorize VA to expend up to 10 percent of each year's appropriation on VA programs designed to develop or initiate improved methods of education and training for health-care personnel.

It is the Committee's intent that, in the case of each grant, VA obligate in any fiscal year only such funds as a grantee school requires for that year rather than obligating in the fiscal year in which the project is approved the total sum required by the school for the life of the project. Although the Committee realizes that schools generally wish to be assured of full funding throughout the expected life of the grant, the Committee desires that as many programs as possible be implemented so as to address more quickly VA's critical health personnel shortage.

In order to ensure that new careers developed under this provision do not lead to fragmentation and duplication of care or to a deterioration in the quality of care if appropriate licensure, registration, or supervisory requirements are not established and enforced, the Committee bill would explicity require that the development and evaluation with grant assistance on new health careers, interdisciplinary approaches, and career advancement opportunities be accomplished in collaboration with the professions whose members are currently responsible for carrying out those duties.

The Committee believes that educational facilities are the best-equipped and most experienced in the process of teaching new health-care workers but recognizes that personnel with VA facilities may also have valuable new ideas and approaches for educating and training such workers. The Committee encourages creative efforts in this area as well. Therefore, funds should generally be disbursed to schools and should be used for VA programs which are considered to be of exceptional quality and which meet the needs of VA in ways which non-VA institutions are unable to match. However, because the Committee does not believe that it is necessary for VA to repair, remodel, or expand its facilities to provide suitable education space in order to carry out such innovative projects, the Committee bill would repeal this authority.

Cost: According to CBO, the enactment of section 267 would entail estimated costs of $5 million in budget authority and no outlays in FY 1990 and total estimated costs of $22 million in budget authority and $10 million in outlays in FYs 1990–1994.

Payment of Physician's and Dentist's Special Pay

Section 268 of the Committee bill, which is similar to the provisions of S. 1211, would generally require the Secretary to pay the applicable maximum amount of special pay authorized to each VA physician or dentist without regard to the 1982 administratively-imposed offset unless the Chief Medical Director determines, in the case of a particular doctor or category of doctors, that it is unnecessary to do so in order to recruit or retain qualified doctors in a specific specialty or geographic area.

Background

On August 26, 1989, in response to difficulties with the recruitment and retention of qualified physicians within VA, the Congress enacted Public Law 96–330 over the President's veto. This law made permanent previously enacted special pay authority and increased rates of such pay. Under this law, for pay periods beginning on or after December 31, 1989, the Administrator (now Secretary) was given the authority to pay special pay to physicians and dentists in an amount not to exceed $22,500 per year. Of this amount, primary special pay of $7,000 is required to be paid to eligible full-time physicians—$2,500 to eligible full-time dentists—prorated for part-time service, and varying amounts (not to exceed $15,500) of incentive special pay may be paid for certain individual attributes such as full-time status, tenure, board-certification, and the nature of the position held.

In October 1981, nine months after this law was enacted, a 4.8-percent general pay increase took effect for Federal employees. Because of the Executive Schedule Level V pay limitation in section 5308 of title 5—then set at $50,112—physicians and dentists who were at that limit, or close to it, did not receive any, or the full benefit, of this increase. In January 1982, three months after the general pay increase, the pay cap was raised to $57,500. According to VA documents, then-Administrator Nimmo made the decision that, in view of this increase in basic pay, the amount of incentive special pay provided for VA doctors should be offset in response to this increase. He based this action on his belief that Congress had intended the increase in special pay to be a relief from the Executive level pay cap. When certain relief was provided by raising the basic pay cap, he believed that incentive special pay should be adjusted downward. The offset was devised in such a way to ensure that physicians and dentists received the 4.8-percent basic pay increase received by all Federal employees in October 1981 and that their special pay was reduced by a commensurate amount.

In October 1982, a 4-percent general pay increase took effect for Federal employees. Even though the Executive Schedule Level V pay cap had been extended the previous year, many VA physicians and some VA dentists were at that limit and it was not possible to grant the full basic-pay increase to all VA physicians and dentists. Therefore, the incentive special pay offset was revised upward in an amount that would provide a combined total of a full 4-percent increase.

Today, the Executive level pay limitation is $75,500; however, the amount of the incentive special pay offset has not been changed since 1982. The following chart depicts the manner in which these pay offsets affect physicians and dentists in various grades and steps and the reduction amounts.

Incentive special pay offsets on and after Oct. 3, 1982

Grade/Step	*Reduction amount*
Chief/5	$391
Chief/6	1,947
Chief/7	2,742
Chief/8–10	2,682
Executive/3	1,411

Grade/Step	*Reduction amount*
Executive/4	2,756
Executive/5	2,688
Executive/6-10	2,682
Director/1	2,237
Director/2	2,719
Director/3-10	2,682
All others limited to base pay at Executive Schedule Level V	2,682

Currently 7,694 full-time physicians and dentists are recipients of special pay, and 6,989—90.8 percent—are experiencing some reduction in incentive special pay. Of 3,616 part-time physicians and dentists receiving special pay, virtually all—3,610—are at Chief grade, step 5 or above, and are experiencing reductions ranging from $391 to $2,756. The remaining 6 part-time employees are below Chief grade, step 5, and are unaffected by the offset. The vast bulk of full-time physicians and dentists, 6,788 or 85 percent, are in Chief grade, steps 8-10, and receive an incentive special pay reduction of $2,682 yearly. Additionally, 164 full-time physicians and dentists are in Executive grade and are subject to a reduction of from $1,411 to $2,688 yearly; 7 fall within the Director grade and are subject to a reduction of from $2,237 to $2,682; and 30 fall within the Executive Schedule and receive a $2,682 yearly reduction.

The Committee has received information that VA is having considerable difficulty recruiting and retaining certain physicians because, among other reasons, their salaries are not competitive with those earned by their peers working elsewhere. A Congressionally-mandated report entitled the "Quadrennial Report to the President on Special Pay for Physicians and Dentists" was due to to be submitted to the President and both Committees on Veterans' Affairs on December 31, 1988. However, that report, which is to contain detailed comparative salary information and VA-specific recruitment and retention data, has been delayed. VA advises that it will be submitted to the Committee upon its completion.

Committee bill

Section 268 of the Committee bill would generally require the Secretary, effective April 1, 1990, to pay each VHS&RA physician and dentist at the applicable maximum rate allowable for him or her under section 4118 of title 38—a potential total of $22,500 for both primary and incentive special pay of which $15,500 could be comprised of incentive special pay alone. The Secretary would not be required to provide pay at this level in cases which the Chief Medical Director determines that it is unnecessary to do so, in the case of a particular doctor or category of doctors, in order to recruit or retain qualified doctors in a specific specialty or geographic area. Although the financial impact on any one physician or dentist would not be great—for the vast majority of full-time VA physicians and dentists, the increase would be about $2,700 per year—the Committee believes the impact on retention and morale would be quite positive. VA estimates that the first full-time cost of the bill would be about $25 million. The effective date is deferred for 6 months into FY 1990 in order to reduce the amount that VA would have to absorb next fiscal year in order to make the payments called for by this measure.

Although it is the Committee's understanding that physician recruitment and retention problems may well be widespread, this may not be the case in all specialities or all geographic areas. Until the Quadrennial Report previously referred is released, this issue remains unresolved. Therefore, a provision was added to the measure as introduced which would repeal the Administrative-offset unless the Chief Medical Director determines that it is unnecessary to do so, in the case of a particular doctor or category of doctors, in order to recruit or retain qualified physicians in specific specialities or specific localities.

The Committee notes that pursuant to Public Law 96-330, as of October 1, 1990, 100 percent of primary and incentive special pay for physicians and dentists will be treated as base-pay earnings for retirement purposes. This may result in mass retirements. With this in mind, the Committee looks forward to receiving the Quadrennial Report.

Cost: According to CBO, the enactment of section 268 would entail estimated costs of $24 million in budget authority and $23 million in outlays in FY 1990 and total estimated costs of $120 million in budget authority and $119 million in outlays in FYs 1990-1994.

Pilot Program of Pay and Personnel Management Practices

Section 269 of the Committee bill, which is similar to the provisions of section 402 of S. 947, which in turn is similar to the provisions of section 625 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741, would require VA during calendar years 1990, 1991, and 1992 to conduct a pilot program at not less than five VA medical facilities to determine the desirability of (1) establishing programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, RNs, and other personnel furnishing direct patient care; (2) creating new alternatives for utilizing the skills and knowledge of RNs in furnishing direct patient care and utilizing the skills and knowledge of other health-care professionals in furnishing direct patient care or services incident to direct patient care; and (3) increasing the pay differential for evening and night service.

Background

Section 332 of S. 9 as reported by the Committee on November 6, 1987, required VA to study and report on various issues related to enhancing VA's recruitment and retention of health-care personnel. Issues relating to management practices, scheduling, and recognition of employees' worth were to be examined (see S. Rept. No. 100-215, pages 159-61, for further background on this provision). On December 3, 1987, during Senate consideration of S. 9, the Senate adopted a Committee amendment to require VA, rather than simply to study and report on the various management and pay practices, to carry out instead a pilot program through which those practices might be tested. Subsequently, this measure was modified in the conference report on H.R. 2616/S. 9 (H. Rept. No. 100-578) to require the Administrator to study and report on the possible effects of pay compression, increased pay differentials for evening- and night-tours of duty, and flexible benefits programs within VA medical centers but not to include the pilot-program provision. The amended provision was enacted on May 20, 1988, as section 231 of Public Law 100-322.

As introduced, S. 947 required VA to test other appropriate personnel and management systems in VHS&RA and to establish flexible employment benefits programs for VHS&RA employees. The effect of flexible benefits on recruitment and retention was to be studied as part of the report required by Public Law 100-322. The provision relating to the testing of personnel and management programs was identical to the provision included as part of section 625 of S. 2011 after VA testified at the Committee's June 16, 1988, hearing that it would find such a pilot program helpful.

Pay and personnel management concerns

Pay differentials: Because furnishing care in medical facilities is a 24-hours-a-day, 7 days-a-week function, employees must be scheduled to work at times that are generally viewed as undesirable. Because the majority of workers chose to work Monday through Friday during regular daylight hours, employers frequently pay premium wages in order to attract workers to other shifts or to work at less desirable times. Currently, VHS&RA is required, under section 4107(e)(2) of title 38, to pay premium wages to nurses and other designated health-care employees at a rate equal to 10 percent of an employee's hourly rate of basic pay if at least 4 hours of a tour of duty fall between 6 p.m. and 6 a.m.

If the Secretary determines that it is necessary to do so in order to obtain or retain the services of nurses, current section 4107(e)(10)(B), authorizes that rates of additional pay, including the evening- and night-shift differential, be increased in order to provide nurses and other designated health-care employees an amount competitive with, but not exceeding, the amount of the same type of pay that is paid to the same category of nurses and other employees at non-Federal health-care facilities in the same geographic area as the VA facility.

As previously mentioned, one aspect of section 231 of Public Law 100-322 requires VA to study the effects on recruitment and retention of increasing pay differentials. This report, which was to have been submitted to the House and Senate Veterans' Affairs Committees on May 20, 1989, has been delayed. However, several VA officials have indicated that results of this study show that VA has deficiencies in this area and is not competitive with the private sector.

Collaborative practice committees: One of the most significant complaints lodged by nursing professionals—generally and in VA as well—is that hospital administrators and physicians fail to appreciate or make appropriate use of nurses' skills or give them autonomy over their clinical practice. One approach to addressing this concern is collaborative practice programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, nurses, and other direct health-care providers.

Such programs have been shown to enhance personal job satisfaction for both nurses and physicians.

A July 1987 preliminary VA report, entitled "Task Force on Recruitment and Retention of Non-Physician Health Care Workers", states that "[T]here is much room for improvement among our physician and nursing staff in their attitudes and dealings with each other and with our other health care workers."

On this same issue, at the Committee's May 18 hearing, the President of the Nursing Organization of VA related the outcome of a recent study done by the Apache Medical Systems which showed that close collaboration of RNs and physicians makes a difference in patient outcome.

Creative models for furnishing care: The demand for nurses in the United States is expected to increase as the population ages and health care becomes more complex. Additionally, because the number of young persons age 18 or under has decreased, fewer persons are available to enter into nursing fields. The literature suggests that many perceive the work of nursing and the environment in which this work occurs as unattractive and undesirable. Nurses are viewed as having little autonomy and status, and nursing is viewed as a field requiring little educational preparation and knowledge. The December 1988 Final Report of the HHS Secretary's Commission on Nursing also made a similar finding and encouraged health-care facilities to take actions to utilize the skills of nurses in a more efficient and economical fashion.

The literature also suggests that other health-care professions are being affected by similar demographic and societal changes. As a result, fewer persons are entering into fields such as physical therapy, occupational therapy, and pharmacy. Each of these professions have begun to explore other avenues to provide the vast amount of patient care which is being sought.

Representatives of veteran service organizations and the Nursing Organization of VA appearing at the Committee's May 18 hearing testified in support of the pilot program provision. VA acknowledged "that certain pilot program proposals would provide a test of some of the study findings [required by Public Law 100-322]" but deferred their support until that study was complete.

Committee bill

Section 269 of the Committee bill would require VA during calendar years 1990, 1991, and 1992 to conduct, and submit periodic reports on, a pilot program at not less than five VA health-care facilities to determine the desirability of implementing various pay and management practices relating to the recruitment and retention of RNs and other scarce health-care professionals. Requirements for VA to test other appropriate personnel and management systems in VHS&RA and to establish flexible employment benefits programs for VHS-RA employees were deleted from the provision as introduced. The provision to test various models for furnishing patient care was extended to include health professions other than nursing. An August 25, 1989, VA study, required by Public Law 100-322, of pay and personnel management practices found that flexible benefits are not widely used within the hospital industry. Also, if competitive pay is implemented (as provided for in the provision derived from section 101 of S. 947, discussed above) the same need to test innovations in personnel and management systems would not seem to exist.

The Committee believes that it is important to study and evaluate all issues relating to the possible enhancement of VA recruitment and retention efforts. Management studies have shown that salaries and benefits alone will not attract and retain employees; an environment in which employees feel they are recognized for their contributions and permitted input into the decision-making process is also a significant factor. VA officials also appear to have recognized this fact, as evidenced in the following statements made in VA's July 1987 report of the "Task Force on Recruitment and Retention of Non-Physician Health Care Workers Preliminary":

> Management attitudes and actions can play a crucial role in establishing an environment conducive to recruitment and retention of the scarce category worker. Both tangible and intangible products of management are vital.

The Committee generally has much confidence in and respect for VA's nursing leadership and, in that regard, directs the CMD, when conducting the pilot program, to provide the Nursing Service with flexibility, within the scope of the legislation, in determining innovative and creative alternatives for utilizing an RN's skills and knowledge.

Cost: According to CBO, the enactment of section 269 would entail estimated costs of $1 million in both budget authority and outlays in FY 1990 and total estimated costs of $3 million in both budget authority and outlays in FYs 1990–1994.

Rates of Pay for Certain Psychologists

Section 270 of the Committee bill, which is identical to the provisions of S. 109, which in turn is similar to the provisions of section 331 of S. 9 as reported by the Committee and passed by the Senate on December 4, 1987, in H.R. 2616, would require the Secretary to increase the rates of pay for VA psychologists with board certification by using the authority provided in section 4107(g) of title 38 unless the Chief Medical Director determines, within 90 days after the date of enactment, that an increase of board-certified psychologists is clearly not necessary for VA to furnish the appropriate quality of psychological services to veterans.

Background

Pursuant to present section 4107(g), as amended by section 108 of Public Law 98–528, the Secretary has the authority to increase pay rates for, among others, clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary if there is difficulty recruiting these professionals. To date, VA has not used this authority.

The provision in the Committee bill was first introduced in 1987 by Senator Daniel K. Inouye as S. 105. In testimony submitted for the Committee's hearing on May 21 of that year, Dr. Leonard Goodstein, Executive Director, American Psychological Association, stated that this measure would help VA to recruit and retain qualified psychologists as well as promote the provision of a higher quality of health care to veterans.

Committee bill

Section 270 of the Committee bill would require the Secretary to approve, within 90 days after the enactment of this legislation, special pay rates for clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accrediting authority approved by the Secretary, unless the CMD determines that such psychologists are not needed to furnish the quality of care determined by the CMD to be appropriate. Should additional pay be authorized pursuant to this provision, the rate would be set at an amount determined by the Secretary, upon the recommendation of the CMD, to be necessary to make VA pay competitive with the pay of psychologists having the same qualifications and credentials serving in non-VA capacities.

The Committee believes that the care provided to veterans should be of the highest caliber and that if board-certified psychologists are necessary to provide such a level of care the Secretary and CMD should utilize the authority they possess under section 4107(g) to recruit such employees.

Cost: According to CBO, the enactment of section 270 would entail no significant costs.

TITLE III—EDUCATION AND EMPLOYMENT

Cost-of-Living Adjustment in Rehabilitation Subsistence Allowances Paid to Service-Connected-Disabled Veterans

Section 301 of the Committee bill, which is derived from section 102 of S. 13 as introduced, would amend section 1508 of chapter 31 of title 38, United States Code, to provide, effective January 1, 1990, for a 9.5-percent increase in the rates of the subsistence allowance paid under chapter 31 of title 38 to veterans with service-connected disabilities who are participating in VA programs of rehabilitation.

Under the chapter 31 program, veterans who have compensable service-connected disabilities resulting in employment handicaps are provided with programs of vocational rehabilitation and with such other rehabilitation services as are needed to restore their abilities to function as independently as possible in their communities. VA estimates that 23,200 disabled veterans will use chapter 31 benefits in FY 1990. While participating in a program of rehabilitation, and for two months following their being rehabilitated to the point of employability, chapter 31 participants receive a subsistence allowance, currently $310 per month for a veteran without dependents, in order to assist with expenses such as transportation, food, and housing.

Disabled veterans in vocational rehabilitation programs require a COLA in their subsistence allowances in order to offset the increased costs of subsistence and transportation. The Congress last increased the allowance under chapter 31 effective October 1, 1984, through the enactment of Public Law 98-543. According to data from the Bureau of Labor Statistics, the Consumer Price Index

(CPI) rose 13.8 percent from the end of 1984 through December 1988.

In view of these rising costs, the proposed 9.5-percent increase is fully justified to maintain adequate financial support for individuals enrolled in education or training to obtain the knowledge or skills needed to offset the employment handicap imposed by their service-connected disabilities.

Section 102 of S. 13 as introduced provided for an increase of 13.8 percent in the chapter 31 subsistence allowance to reflect the cost-of-living increases indicated by the CPI figures stated above, but was reduced in recognition of the need for fiscal austerity. The Committee notes that the 9.5-percent increase in the Committee bill does not include the full CPI increase or take into account the estimated 4- to 5-percent increase in inflation expected to occur this calendar year.

In S. 1003, which was introduced at the Administration's request, the Administration proposed a 5-percent proposal to take effect on October 1, 1989.

Cost: According to CBO, the enactment of section 301 would entail estimated costs of $4 million in both budget authority and outlays in FY 1990 and total estimated costs of $28 million in both budget authority and outlays in FYs 1990–1994.

Cost-of-Living Adjustment in Educational Assistance Allowances for Survivors and Dependents of Certain Service-Disabled Veterans

Section 302 of the Committee bill, which is derived from section 103 of S. 13 as introduced, would amend section 1732 of chapter 35 of title 38 to provide, effective January 1, 1990, for a 9.5-percent increase in the rates of the educational assistance allowance paid to certain dependents and survivors of service-disabled veterans.

The chapter 35 survivors' and dependents' educational assistance program provides benefits to the children—generally those between 18 and 26 years old—and the spouses of veterans who died of service-connected disabilities or who have service-connected disabilities rated permanent and total and of certain servicemembers who are prisoners of war or are missing in action. In addition, dependents of servicepersons missing in action or interned by a hostile foreign government for more than 90 days are also eligible under this program. Currently, the monthly rate for full-time institutional training is $376, which assists in defraying the costs of tuition, fees, transportation, books, room, board, and other items of subsistence. VA estimates that 41,900 individuals will pursue an educational program under chapter 35 in fiscal year 1990.

Survivors and dependents of service-connected disabled veterans using chapter 35 educational assistance today are faced with greatly increased expenses. The Department of Education reports that the costs of tuition, fees, room, and board associated with higher education have risen dramatically. From 1984 through 1988, the cost of higher education increased 18 percent for public colleges and universities and 28 percent for private institutions.

In view of these rapidly rising costs associated with higher education, the proposed 9.5-percent increase is fully justified to maintain adequate financial support for those students receiving education benefits following the death of a spouse or parent.

Section 103 as introduced provided for an increase of 13.8 percent in the chapter 31 subsistence allowance to reflect the cost-of-living increases indicated by the cost-of-education and CPI figures stated above. The Committee notes that, in recognition of the need for fiscal austerity, the 9.5-percent increase in the Committee bill does not take into account the full effects of inflation through 1988 or the estimated 4- to 5-percent jump in inflation expected to occur this calendar year.

In S. 1003, introduced at the Administration's request, the Administration proposed a 5-percent proposal to take effect on October 1, 1989.

Cost: According to CBO, the enactment of section 302 would entail estimated costs of $7 million in both budget authority and outlays in FY 1990 and total estimated costs of $37 million in both budget authority and outlays in FYs 1990–1994.

Vocational Training for Certain Pension Recipients

Section 303 of the Committee bill, which is derived from section 101 of S. 1003, an Administration proposal, would amend section 524(b) of title 38 to (1) make participation in the temporary program of vocational evaluations and training for new recipients of VA pensions completely voluntary by eliminating the requirement that veterans under age 50 who are awarded pension during the program period participate in a mandatory evaluation to determine whether achievement of a vocational goal is reasonably feasible, and (2) provide a trial work period of 12 consecutive months during which the participant's pension would not be terminated either by reason of his or her having the capacity to engage in suitable employment or by reason of the income earned therefrom.

Background

Under section 521 of title 38, VA needs-based pension benefits are paid to wartime veterans who have non-service-connected disabilities rated permanently and totally disabling or who are over age 65 (and thus presumed to be disabled). Pension benefits are based on the veteran's total family income not including any VA pension payments. Thus, for example, for a veteran who has no dependents the amount of annual pension is currently $6,463 minus countable income. (Higher levels are provided for those with dependents and those who are housebound or need regular aid and attendance.)

Temporary programs of vocational evaluations and training and health-care eligibility protection for certain new pension recipients were established by the Congress in sections 524 and 525 of title 38 by section 301(a) of Public Law 98–543 in 1984, and were amended and extended through January 31, 1992, by section 1303 of Public Law 100–687.

Under section 524, a veteran who receives an award of non-service-connected disability pension on the basis of actual permanent and total disability—as distinguished from presumptive disability based on being 65 years of age or older—and for whom a vocational goal is determined to be feasible is entitled to be provided with a vocational training program consisting of such services and assistance as are necessary, within certain limitations, to enable the veteran to prepare for, gain, and maintain employment.

Veterans who are under age 50 when awarded pension are required to undergo VA evaluation of their potential for vocational rehabilitation. The penalty for refusing evaluation is the suspension of the veteran's pension. Participation in vocational training is entirely voluntary, however.

Veterans who are 50 or older when awarded pension and those who were awarded pension before this program began may apply for evaluation and training.

Under section 525, a veteran whose entitlement to pension is terminated during the program by reason of earned income retains for three years after termination the eligibility for VA health-care services that the veteran would have had if the veteran's entitlement to pension had not been terminated.

Committee bill

The Committee bill would make participation in the temporary program of vocational training completely voluntary by eliminating the requirement that veterans under age 50 participate in a vocational evaluation.

The Committee believes that this modification—proposed by the Administration—will improve vocational-training participation and program results. VA's experience in providing evaluations to determine whether a vocational goal is reasonably feasible has indicated that, in the cases of veterans over 50, for whom evaluations are voluntary, those who are capable of participating in vocational training did so to a substantially greater degree than veterans under age 50 who were required to participate in a "mandatory" evaluation. VA reports that in the program for those pensioners who are 50 and above, one in five who are evaluated for training enter training. For pensioners who are under 50, for whom evaluations are mandatory, only one in seventeen actually enters training after being evaluated.

Additionally, VA reports that, for pensioners who are over 50 and seek evaluations, only 48 percent are found not suited for vocational training; for pensioners under 50, 71 percent are found not suited for training. The cost of the evaluations is by far the largest single cost in administering this program. Reduction of this expense, by eliminating the mandatory requirement for evaluation in the under-50 group awarded pension, should improve program effectiveness without impairing veterans' access to services.

Although the requirement for evaluations of new pensioners under age 50 would be eliminated, the Committee intends that VA publicize the availability of evaluation, training, and trial-work opportunities (as discussed below) to all new pensioners and encourage them to participate.

The Committee bill would also provide—as proposed by the Administration—a trial-work period of 12 consecutive months during which the participant's pension would not be terminated because of his or her having the capacity to engage in suitable employment or by reason of the income earned therefrom. This trial-work period is designed to alleviate the disincentive that the loss or reduction of pension poses for pensioners who train for secure employment under this program. Under the Committee bill, the veterans' pension would not be reduced until the veteran has been employed for 12 consecutive months in an occupation consistent with the objective of the veteran's individualized written rehabilitation plan. This approach would provide the veteran with a reasonable certainty that the pension would not be reduced unless his or her ability to maintain employment had been well established.

The Committee notes that a similar temporary program, under section 363 of title 38, of trial-work periods for certain veterans with total service-connected disability ratings based on individual determinations of unemployability, has met with reasonable success (see Report on the Temporary Program for Trial Work Periods and Vocational Rehabilitation for Certain Veterans with Total Disability Ratings, Veterans' Administration, July 1988). The Committee believes that this concept of trial-work periods can be applied successfully to veterans in the vocational training program for new pension recipients as well.

The Committee has historically favored efforts to assist pensioners return to work. In the original Senate version of the legislation (Public Law 95-588) enacting the current VA pension program, S. 2384 as reported and H.R. 10173 as passed by the Senate in the 95th Congress, the Committee recognized that the dollar-for-dollar reductions of pension required in considering earned income would create a powerful disincentive for pensioners to try to return to the workforce. Thus, the Senate bill would have permitted a VA pensioner to exclude from countable income the first $780, and one-half of the remainder, of his or her work income. In the case of one in need of regular aid and attendance, the first $1,560 would have been excluded. The Committee remains eager to pursue initiatives to overcome the work disincentive in this program and thereby help to enable disabled and elderly pensioners to live more productive, fulfilling lives.

Cost: According to CBO, the enactment of section 303 would entail no significant costs.

Provision for Permanent Program of Independent Living Services and Assistance

Section 304 of the Committee bill, which is substantively identical to section 104 of the Administration-requested S. 1003, would amend section 1520 of title 38 to make the program of independent living services for service-disabled veterans a permanent part of chapter 31. This program is designed to enable severely-disabled veterans for whom vocational rehabilitation is not currently feasible to live more independent lives.

Currently, under section 1520 of title 38, the Secretary of Veterans Affairs may provide—subject to conditions described therein and regulations prescribed thereunder—a program of independent living services and assistance to a veteran who has a service-connected disability and with respect to whom it is determined that the achievement of a vocational goal currently is not feasible.

Section 1520 directs the Secretary to include among those veterans who are provided with programs of independent living services and assistance the maximum feasible number of veterans who are receiving long-term care in VA hospitals and nursing homes and in contract community nursing homes. Such programs are to consist of those services the Secretary determines necessary to enable the veteran to achieve maximum independence in daily living.

Currently, the law provides for a program of independent living services only through September 30, 1989, and permits initiation of such programs by no more than 500 veterans in each fiscal year to that date. In recognition of the success of this program, the Committee bill would remove the September 30, 1989, termination date but, in the interest of prudent planning of services, retain the 500-veteran cap on program initiations per fiscal year.

Cost: According to CBO, the enactment of section 304 would entail no significant costs.

Veterans' and Reservists Work-Study Program

Section 305 of the Committee bill would amend section 1685 of title 38 to, as of May 1, 1990, (1) require work-study payments to be based on the higher of the Federal minimum wage or the minimum wage of the particular State involved; (2) expand eligibility for the work-study program to include individuals training under chapter 106 of title 10 (members of the Selected Reserve) and make activities related to the administration of chapter 106 at Department of Defense facilities a service which may be performed by chapter 106 participants under work-study; and (3) make service-disabled veterans eligible for work-study benefits when pursuing training or attending school at a half-time or higher rate (a) under chapter 31 (vocational rehabilitation), or (b) if the veteran's service-connected disability is rated at 30 percent or more, under chapter 10 (Montgomery GI Bill—MGIB), chapter 32 (Post-Vietnam Era Veterans' Educational Assistance Program—VEAP), or chapter 34 of title 38 (Vietnam-era GI Bill).

Under section 1685 of title 38, VA administers a work-study program for veteran-students who are pursuing an educational assistance program under chapter 30, 31, 32, or 34. VA pays veteran-students at the Federal minimum-wage rate for up to 250 hours of employment during a semester or other enrollment period for work performed in connection with (1) VA's outreach services program as carried out under the supervision of a VA employee, (2) the preparation and processing of necessary papers and other documents at educational institutions or VA regional offices or other facilities, (3) the provision of hospital, domiciliary, and other outpatient care by VA, or (4) any other VA activity that the Secretary determines to be appropriate.

The work-study program continues to be very successful. From September 1984 through September 1988, 124,802 veteran-students have participated in work-study while enrolled in school under chapter 34, and 19,058 have participated in work-study while enrolled under chapter 31.

In sections 320 (a) and (b) of Public Law 99-576, enacted on October 28, 1986, Congress established the Commission on Veterans

Education Policy (hereinafter referred to as "VEP Commission") and charged it with the responsibility to assess various matters relating to the administration of VA educational assistance programs and to report to VA and the House and Senate Committees on Veterans' Affairs its findings, views, and recommendations with respect to such matters. The VEP Commission submitted that report to Congress on August 29, 1988. Under section 320(a)(1), VA was required to submit to the Committees an interim report on the VEP Commission's recommendations. VA submitted that report (hereinafter referred to as "Interim Report") on April 24, 1989. Section 320(c)(2) required the VEP Commission, within 90 days following submission by VA of its Interim Report, to submit to VA and the Committees the Commission's views on VA's Interim Report. Those views were submitted on July 27, 1989.

In its August 29, 1988, report to Congress, the VEP Commission, based on its survey of VA personnel and participating educational institutions, found a need to attract more students into the work-study program. The VEP Commission, on page 169 of its report, found that the effective use of work-study is frustrated not by a lack of funding—it is funded out of an entitlement account, VA's Readjustment Benefits account—but by a shortage of interest on the part of students who are otherwise eligible to participate in the program. Thus, the Commission stated:

> The Commission has become convinced of the need for incentives to attract work-study students, particularly in certain areas. For example, several States have a minimum wage higher than the Federal minimum wage, and work-study opportunities in these States are simply not competitive. Compounding the low-wage problem, many worksites are located in metropolitan areas where the costs of public transportation or parking can easily offset earnings based on 250 hours of work during a semester.

To correct this problem, the Commission recommended an overhaul of VA's work-study program to provide for a flexible payment scale that could be used to attract and retain quality work-study students, especially in high-cost areas. VA supports that recommendation in concept, but concluded on page 96 of its Interim Report that the goal sought by the Commission could be gained by basing the work-study payments on the higher of the Federal wage or the applicable State minimum wage in the case of the 12 States in which such a wage is higher.

The Committee believes that this approach is an acceptable step at this point to address the VEP Commission's finding that, in order to increase the number of veterans participating in the program, VA work-study wages need to be more competitive with those paid by other part-time employers.

Secondly, the Committee bill would make MGIB Selected Reserve students training under chapter 106 of title 10 eligible for VA's work-study program. On page 169 of its report, the VEP Commission recommended expanding work-study eligibility to include individuals training under the chapter 106 program, thereby addressing the need to attract greater numbers of participants in VA's work-study programs.

The Committee notes that since the inception of the chapter 106 program in July 1985, 139,321 Reservists have applied for participation and approximately 56,500 Reservists are currently enrolled in training under chapter 106. The expansion of VA work-study eligibility would afford chapter 106 students the same opportunities available to all current VA work-study students: additional income to assist in meeting basic needs while attending school, a means of enhancing learning opportunities, and exposure to careers in the public sector. At the same time, such an expansion would benefit VA by providing an additional source of personnel for VA medical centers, VA regional offices, and schools, to assist in the operations of the benefits delivery system.

Additionally, this provision of the Committe bill would authorize as a work-study assignment duties relating to the administration of the chapter 106 progarm at Department of Defense facilities such as various Guard and Reserve units. The Committee believes that the assignment of chapter 106 work-study students to the administration of the chapter 106 benefits-delivery system would be a valuable resource for National Guard and Reserve units in their cooperative working relationship with VA, would help ensure timely and accurate reports between the units and VA, and could provide a positive work experience for chapter 106 students.

Finally, this provision would make service-disabled veterans eligible for work-study benefits when pursuing training or attending school at a half-time or higher rate under chapter 31 or, for veterans with a service-connected disability rated at 30 percent or more, under chapter 30, 32, or 34.

Section 1685(b) of title 38 provides work-study eligibility to veteran-students who are pursuing full-time programs of education or training under chapter 30, 31, 32, or 34. Veterans pursuing programs of education at less-than-full-time rates are not currently eligible.

Yet veterans frequently pursue training on less than a full-time basis while working part time to meet family or other financial responsibilities. The jobs they obtain sometimes result in extremely arduous schedules which can prove difficult to maintain, particularly for the disabled veteran. Allowing certain service-disabled veterans who are enrolled in less-than-full-time programs to participate in the work-study program would provide an additional resource in the development of an educational assistance or vocational rehabilitation program which these veterans could pursue successfully.

The Committee bill would enable service-disabled veterans to be eligible for work-study benefits if they are pursuing training or attending school at a half-time or higher rate (1) under chapter 31, or (2) under chapter 30 and 32 if the veteran's service-connected disability is rated at 30-percent or more disabling.

Section 3 of S. 1003 as introduced would have provided work-study eligibility only to veterans attending school at a half-time or higher rate under chapter 31 or, of the veteran's disability were rated at 50 percent or higher, under chapter 34.

The Committee agrees with the proposal to extend work-study eligibility to all veterans engaged in half-time or greater pursuit under chapter 31.

Regarding the proposal relating to chapter 34, which expires on December 31, 1989, however, the Committee (1) believes that the 50-percent-rating threshold is too high and should be lowered to 30 percent, and (2) sees no reason for not includng both the MGIB (chapter 30) and VEAP, chapter 32), which have no such imminent termination date.

The Committee notes the 30-percent rating is the cut-off point under section 315 of title 38 for the payment of dependents' allowances to disability compensation recipients and the general benchmark under the provisions of section 2012 of title 38 requiring certain affirmative actions by Federal contractors with respect to the employment of service-disabled veterans. In addition, VA regulations implementing provisions of chapter 31 providing for special consideration for service-disabled veterans who have a "serious employment handicap" (section 21.52(c)(1) of title 38, Code of Regulations) provide that a veteran who has a neuropsychiatric service-connected disability rated at 30-percent or more disabling shall be considered to have a serious employment handicap. Those regulations also provide that a veteran with a non-neuropsychiatric service-connected disability rated at 30 or 40 percent may be found to have a serious employment handicap if (1) the veteran has a prior history of poor adjustment in training and employment and will require special efforts in order to be rehabilitated or (2) the veteran's situation presents special problems due to factors such as non-service-connected disability and family pressures and a number of special and supportive services are needed to effect rehabilitation (38 CFR 21.52(d)). In connection with the Committee's proposal to expand the provision to cover chapters 30 and 32, the Committee notes that in FY 1989, 16,048 veterans with service-connected disabilities rated 30 percent or more were participating in the chapter 34 program—many at low-cost institutions—rather than opting for the chapter 31 program for which they were eligible and that currently 4,942 of its chapter 30 and 32 participants are service-connected disabled veterans rated at 30 percent or more disabling who have not opted for the chapter 31 program and potentially could benefit from this provision were it enacted.

Cost: According to CBO, the enactment of section 305 would entail estimated costs of $1 million in both budget authority and outlays in FY 1990 and total estimated costs of 25 million in both budget authority and outlays in FYs 1990–1994.

Work-Study Program for Survivors and Dependents

Section 306 of the Committee bill, which is derived from section 3 of S. 1092, would add a new section 1737 to title 38 to expand, effective May 1, 1990, eligibility for VA's work-study program to include persons pursuing education programs under chapter 35 of title 38, the program of educational assistance for the survivors of those who die from service-connected disabilities or while rated permanently and totally disabled from service-connected disabilities and the dependents of veterans who are so rated and of certain servicemembers who are prisoners of war or missing in action.

Background

As noted above in the "Background" discussion on section 305 of the Committee bill, the VEP Commission indicated on page 169 of its report that a primary concern regarding VA's work-study program as expressed to the Commission by both participating institutions and VA personnel was a need to attract more students into that program. The Commission emphasized that a lack of interest in the program on the part of eligible students—in part due to the limited work-study wage—represents the most serious factor currently undermining more effective use of the program.

Accordingly, the VEP Commission recommended expanding eligibility for the work-study program to individuals training under chapter 35 because doing so "would achieve consistency among [VA's] programs and increase the number of individuals who could participate".

The VA response, on page 95 of its Interim Report, indicated opposition to extending work-study eligibility to chapter 35 students because such students already may utilize a variety of government-wide opportunities for educational assistance, including the work-study program funded by the Department of Education. However, the Committee believes participation by chapter 35 students in Department of Education programs to be miminal.

Committee bill

Section 306 of the Committee bill would, effective May 1, 1990, expand eligibility for VA's work-study program to include dependents and survivors pursuing education programs under chapter 35 of title 38.

The provision as introduced in S. 1092 had an October 1, 1989, effective date. The postponement, which would reduce costs entailed by the new provision in FY 1990 by $1 million in both budget authority and outlays, is necessary in order to bring the budget authority costs for the Committee bill within the limits of the Committee's FY 1990 allocation under section 302(a) of the Congressional Budget Act.

Cost: According to CBO, the enactment of section 306 would entail no significant costs in FY 1990 and estimated costs of $4 million to both budget authority and outlays in FYs 1990–1994.

Withdrawal From Course Under Mitigating Circumstances

Section 307 of the Committee bill, which is derived from section 8 of S. 1092, would amend section 1780 of title 38 so as to provide that, when a veteran or eligible person must suspend his or her pursuit of a program of education with VA assistance because of the need personally to furnish child care for the individual's child and the necessity for doing so results from difficulties beyond the individual's control in making or changing child-care arrangements, mitigating circumstances relieving the individual from repaying educational assistance received for the period of study would be considered to exist.

Background

Current section 1780(a)(4) of title 38 automatically permits a student who is using VA education benefits a one-time opportunity to withdraw from a course or courses not exceeding 6 semester hours or the equivalent without being required to repay benefits retroactively to the beginning of the term. However, where the withdrawal is from more than 6 hours or is the second or subsequent withdrawal, the individual must either demonstrate that mitigating circumstances are involved in the withdrawal or be charged with an overpayment retroactive to the beginning of the term.

The Committee notes that the implementing regulations (38 C.F.R. 21.7020(b)(19)), do not include difficulties with child-care arrangements among the circumstances beyond the individual's control which are considered mitigating for these purposes.

In addition, the Committee notes that the VEP Commission surveyed higher education institutions nationwide regarding the issue of mitigating circumstances and stated, on page 277 of its report, that responses to the question as to what the VA Regional Offices accepted as "mitigating circumstances" for purposes of withdrawing from a course, fell most often in four categories, none of which included child-care difficulties.

However, the Committee notes that, in response to the Commission's recommendation, VA stated on page 66 of its Interim Report that it plans to amend its regulations on mitigating circumstances to add "difficulties in obtaining or changes in child-care arrangements beyond the control of the veteran or servicemember which requires him or her to suspend pursuit of the program of education, in order to provide such care."

Committee bill

The Committee appreciates VA's intent to amend its regulation on mitigating circumstances so as to clarify its policy, which VA Chief Benefits Director R. J. Vogel indicated, on page 24 of his written statement for the Committee's June 9, 1989, hearing, already specifies that child-care arrangements can and should be considered a mitigating circumstance for course withdrawals.

The Committee also notes the written statement of VEP Commission Chairman Janet D. Steiger, at the Committee's June 9 hearing (page 8):

> The Commission is pleased that S. 1092 would specifically add child difficulties to the list of circumstances that VA may consider mitigating for purposes of determining whether an overpayment should be established when a student drops or discontinues course work.

Cost: According to CBO, the enactment of section 307 would entail no significant costs.

Limited Extension and Expansion of the Veterans' Readjustment Appointment Authority

Section 308 of the Committee bill, which is derived from section 113 of S. 13 and S. 1279, would (1) extend for two years the VRA authority termination date but only for Vietnam-era veterans who are service-disabled or served in the Vietnam theater of operations; (2) as of the date of enactment, expand eligibility during the extended period to include post-Vietnam-era veterans and all veterans with service-connected disabilities rated at 30 percent or more; (3) provide for a one-time limit on use of the authority for any particular veteran after the date of enactment; and (4) limit the period during which an appointment may be made by requiring that the veteran receive an appointment by the later of (a) the end of the 4-year period from the date of separation, or (b) the 2-year period beginning on the date of enactment. These appointments permit expedited (excepted-service) appointments of eligible veterans in Federal departments and agencies.

The VRA authority, which would otherwise expire on December 31, 1989, currently permits certain service-disabled Vietnam-era veterans and educationally-disadvantaged Vietnam-era veterans to be given excepted appointments in the Federal civil service. The purpose of the VRA authority is to assist these veterans by making it possible for them to be hired noncompetitively into the Federal civil service and to develop additional skills through a program combining education and training with the opportunity for a regular career appointment.

The VRA authority was originally created on March 26, 1970, by Executive Order No. 11521 which established a special civil service appointment authority for certain veterans and disabled veterans of the Vietnam era who were discharged after April 9, 1969. In 1973, legislation based on the Executive order and enacted in Public law 93-508 codified the VRA authority as section 2014(b) of title 38 and provided for the continuation of the program through June 30, 1978.

Under those original provisions, in order to be considered for an appointment, a qualified veteran must have enrolled in a program of education within one year after release from active duty and have had no more than 14 years of education, served on active duty during the Vietnam era, and generally have been separated from the service for one year or less. Such a veteran could be given a VRA for any position in the competitive service at or below the General Schedule grade GS-5 level or its equivalent. A veteran who had satisfactorily completed two years of substantially continuous service under a VRA and an education or training program was converted to career-conditional employment and automatically acquired a competitive status for civil service purposes.

In 1978, legislation enacted in Public law 95-520 extended the VRA authority through September 30, 1981. This legislation also extended eligibility to all Vietnam-era veterans with no more than 14 years of education, not just those separated after April 9, 1969, and eliminated the maximum limitation on the number of years of education for Vietnam-era veterans with compensable service-connected disabilities and for those who were discharged or released because of a service-connected disability. Finally, that measure raised the grade-level limitation for VRAs from GS-5 to GS-7 and expanded requirements for reporting on the use of this authority.

In 1981, provisions enacted in Public Law 97-72 further extended the authority through September 30, 1984. In 1984, provisions enacted in Public Law 98-543 led to the extension of the authority through September 30, 1986, raised the grade-level limitation from GS-7 to GS-9, and provided veterans who received VRA appointments with certain appeal rights to the Merit Systems Protection Board during the first year of employment. In 1986, legislation enacted in Public law 99-576 extended the VRA authority until December 31, 1989.

The success of the VRA is evident in the nearly 300,000 veterans hired under the VRA authority since its inception in 1970. In fiscal year 1988, nearly 11,000 veterans were given appointments. Over 80 percent of veterans who have received VRAs have converted to career-conditional employment status in the civil service system. In addition, the VRA is one of many successful veterans programs that have contributed to a reduced unemployment rate for Vietnam-era veterans, which—according to the Bureau of Labor Statistics (BLS)—is only 3.7 percent compared to the 5.3 percent national rate as of July 1989.

The Office of Personnel Management's statutorily-required Annual Report to Congress on Veterans' Employment in the Federal Government for FY 1987 stated that only 12 percent of the veterans hired under the VRA were disabled veterans. In addition, only 3 percent of Federal new hires were disabled veterans. According to the BLS study of unemployment among certain disabled veterans and Vietnam-theater veterans required under section 9 of Public Law 100-323, the Veterans' Employment, Training, and Counseling Amendments of 1988, disabled veterans experience higher unemployment rates than do other veterans—6.2 percent compared to 4.7 percent. Furthermore, individuals who served in the Vietnam theater of operations have a higher unemployment rate than those who served elsewhere during the Vietnam era—5.2 versus 4.3 percent.

Because of the continuing difficulties that service-disabled Vietnam-era veterans and Vietnam-era veterans who served in the Vietnam theater are experiencing in the job market, the Committee does not believe Congress should allow the VRA to expire on December 31 of this year for these groups. In addition, given the current 7.1 percent unemployment rate among post-Vietnam-era veterans in the 20-29 age group, the Committee believes that such veterans can benefit from VRA and should be made eligible for the program. Further, such eligibility would assist Federal agencies and departments in recruiting such veterans into careers in Federal service.

As introduced, section 113 of S. 13 would have extended the VRA authority (currently available for all Vietnam-era veterans) for 2 years, through December 31, 1991, but only for Vietnam-era veterans who (a) have a service-connected disability, or (b) served in the Vietnam theater of operations. S. 1279 would have opened the program to post-Vietnam-era veterans, allowed veterans 10 years from date of separation to use the program, and made all disabled veterans eligible.

Cost: According to CBO, the enactment of section 308 would entail no significant costs.

Pilot Program To Furnish Employment and Training Information and Services to Members of the Armed Forces Separating From the Armed Forces

Section 309 would authorize the Secretary of Labor, during FYs 1990–1992, to conduct a pilot program under which Disabled Veterans' Outreach Program Specialists (DVOPs) and Local Veterans' Employment Representatives (LVERs) would participate in providing employment and training information services to members of the Armed Forces within 180 days before their separation from the Armed Forces. The program would involve not less than 5 nor more than 10 geographically-dispersed States in which the Secretary of Labor determines that services to veterans would not be unduly limited as a result of the pilot program. The Secretary would be required to transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives not later than February 1, 1992, a report on the experience under the pilot program.

Background

Current law (chapter 41—Job Counseling, Training, and Placement Service for Veterans) does not explicity authorize DVOPs and LVERs to furnish employment and training services to members of the Armed Forces. Rather, such services are authorized to be furnished to certain categories of veterans—that is, persons who have been discharged or released from active duty—and to the spouses and surviving spouses of certain service-disabled veterans and the spouses of servicemembers who are missing in action or held captive.

The Rehabilitation Foundation of the California Department of the Disabled American Veterans (DAV) Foundation and the California Economic Development Department (EDD) began providing a pre-separation "Career Awareness Program" (CAP) to separating servicemembers at Lemoore, California, Naval Air Station in 1978. From 1985 to the present, the CAP has expanded its services to 13 Navy, Marine Corps, Army, and Air Force bases in California. Through 1988, 11,177 soon-to-be-separated servicemembers attended some 173 CAP classes prior to separation. In 1989, about 9,000 servicemembers will attend the CAP's one-week pre-separation classes, which address (1) identification of individual skills and values; (2) job sources and job analysis; (3) résumé preparation and job-interview techniques; (4) veterans' and military benefits and procedures for applying for them and (5) opportunities in the Selected Reserve.

Based on preliminary analysis, the CAP program has been found to provide many benefits, including (1) increased retention in Active Duty and Reserve components; (2) reduced unemployment costs associated with post-separation job referral and placement; (3) higher starting salaries among CAP attendees as compared to non-CAP attendees; and (4) reduced military retraining costs.

Under the CAP concept, the California EDD utilizes DVOPs as part of its outreach responsibilities under section 2003A(c)(3) to veterans—in anticipation that most of the servicemembers assisted are about to become veterans when they participate in CAP. According to the EDD, a significant percentage of soon-to-be-separated servicemembers file for disability compensation, and the State thus believes there is a legitimate need to use DVOPs to assist such servicemembers. The Committee further notes that various California community colleges have participated in this program by providing, under contract to the California EDD, instructors for various parts of the program and that excellent cooperation has been provided by the four military services, particularly the Navy, in furnishing class facilities and informing military separatees and retirees of the procedures associated with registering for CAP.

The Army, in cooperation with the Assistant Secretary of Labor for Veterans' Employment and Training, initiated in 1985 a "Transition Management" test program at Fort Bragg, North Carolina, to assist servicemembers there in the transition to civilian life. The Transition Management Program was designed to meet the demographic and economic challenges of the 1990's and to bring about increased Army active-duty and National Guard and Reserve retention and reduced unemployment compensation costs paid by the Army for former soldiers. In addition, an LVER "outstationed" at Fort Bragg serves as a resource-person to separating soldiers by providing them with a comprehensive view of the prevailing labor market along with information regarding services available through State employment security agencies. According to then-Acting Assistant Secretary of the Army William D. Clark, the participation of the LVER has added materially to the value of the Transition Management program.

The Department of Labor is currently working to secure agreements with both the Department of Defense and the Department of Veterans Affairs to initiate a limited "transition management"-type pilot program at seven sites in FY 1990. These pilot programs are designed to build on the experience of the original Army Transition Management project at Fort Bragg while making various improvements to it largely based on the CAP. The pilot programs would provide servicemembers, prior to their separation from active duty, with sufficient vocational guidance to allow them to make informed career choices—and the necessary array of employment and training services to carry out those choices. Such guidance and services would include instruction in career decision-making logic, a realistic evaluation of employability, current occupational and labor-market information, development of the tools used in conducting a successful job search, an overview of available training programs, and assistance in job and training placement.

The program would apparently have two components, a Veterans' Transition Assistance Program (VTAP) and a Disability Transition Assistance Program (DTAP). The VTAP would serve servicemembers separating or retiring from the military and would be tested at four military bases in FY 1990, one from each military branch. The DTAP would be tested at three military hospitals—one Navy (including Marine Corps), one Army, and one Air Force—from which disability separations customarily occur.

The Committee bill provision to establish a pilot program of pre-separation employment and training services is based on the interest shown by certain State Employment Security Agencies, the Veterans' Employment and Training Service of the Department of Labor, and the Armed Forces, in providing such services to soon-to-be released servicemembers who are about to become eligible veterans and the general need for a more innovative approach to assisting in servicemembers' transition from military life into meaningful civilian careers.

The Committee notes that, according to the Bureau of Labor Statistics, the unemployment rate for veterans in the 20 to 29 age category—the category in which the majority of separating veterans fall—was 7.1 percent as of August 1, 1989. Further, the shortage of skilled workers in the civilian workforce projected for the late 1990s further justifies the provision of improved assistance to servicemembers making the transition from active duty to the civilian workforce.

The Committee further notes that the CAP model of using DVOPs along with college instructors would be a useful approach to emulate in the pilot program. The Committee intends that pilot programs be given the discretion to use such instructors in addition to DVOPs and LVERs.

Finally, the Committee intends that, in targeting any funding to be provided to individual State Employment Security Agencies (SESAs) for pre-separation employment and training programs for servicemembers, the Secretary of Labor give special consideration to those States which have developed such programs through their own initiative.

Cost: According to CBO, the enactment of section 309 would entail no significant costs.

Alternate Secondary School Credentials for Montgomery GI Bill Eligibility

Section 310 of the Committee bill is substantively identical to section 102 of the Administration-proposed S. 1003 and is substantially similar to the proposal in section 313 of S. 2011—itself derived from section 102 of the earlier Administration-proposed S. 2307—as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741. Section 310 would amend sections 1411(a)(2) and 1412(a)(2) of title 38 and section 2132(a)(2) of title 10 to authorize the Secretary of the military department concerned to determine—pursuant to regulations prescribed by the Secretary of Defense—the secondary school equivalency certificate(s) acceptable as a prerequisite for eligibility to participate in the Montgomery GI Bill (MGIB).

Current law provides that, to be considered eligible for the MGIB, an individual must have a secondary school diploma or an equivalency certificate.

The term "equivalency certificate" has been used in section 1691 of title 38 since 1970 and VA has interpreted it to mean a "General Education Diploma (GED) Certificate". However, recent Department of Defense directives relating to entitlement qualifications have expanded the definition of "equivalency certificate" to include, for example, a certificate gained through a correspondence school or by passing a State high school proficiency examination. Although the Committee believes the change proposed could be made by a change in the applicable regulation, it has acceded to the Administration proposal in order that the matter be free from doubt. The Committee believes that the secondary school requirement was intended to assist the military in obtaining qualified personnel and that the requirement should conform, as proposed in the Committee bill, to the standards acceptable to the Armed Forces.

Cost: According to CBO, the enactment of section 310 would entail no significant costs.

Bar to Receipt of Chapter 32 and 106 Benefits for Same Period of Service

Section 311 of the Committee bill, which is derived from an amendment proposed in Committee by Senators Cranston and Murkowski, would amend section 1621 of title 38 to prohibit individuals from receiving entitlement credit under both chapter 32 of title 38, the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) and chapter 106 of title 10, the Montgomery GI Bill for members of the Selected Reserve (MGIB-Selected Reserve), based on the same period of service.

Current law, as a result of an inadvertent drafting error, permits duplication of chapter 32 and chapter 106 entitlement. In no other cases may an individual earn entitlement to VA-administered educational assistance based on the same period of service.

Cost: According to CBO, the enactment of section 311 would entail no significant costs.

Accepting School Certification for Renewal of Educational Benefits After Unsatisfactory Progress

Section 312 of the Committee bill, which is derived from section 202 of the Administration-requested S. 1003, would amend section 1674 of title 38 to permit VA to accept a school's certification for renewal of an individual's educational benefits following termination for unsatisfactory conduct or progress.

The Secretary is permitted, under section 1674 of title 38, to resume payment of educational assistance allowance to an otherwise eligible veteran, following the termination of such allowance because of his or her unsatisfactory conduct or progress, if the Secretary finds that the cause of the problem has been removed and the program of education is suitable to the veteran's aptitudes, interests, and abilities.

This provision would permit VA to accept a school's certification of reenrollment as showing that the cause of the veteran's unsatisfactory conduct or progress has been removed and the program is suitable. The proposal's application would be limited to resumption of the same program at the same educational institution which reported the unsatisfactory progress.

VA, in discussing its recommendation of this provision, stated:

> Our experience has shown [that] the Department's development of evidence for purposes of the required determination seldom provides any cogent information which would support a continued denial of benefits. Moreover, the development requirement adds substantially to the time it takes to process these claims to award benefits.

Cost: According to CBO, the enactment of section 312 of the Committee bill would entail no significant costs.

Romoval of Attendance Requirement Distinctions Between Degree and Nondegree Training

Section 313 of the Committee bill, which is identical to section 5 of S. 1092, would amend sections 1674, 1724, 1775(b), and 1780(a) of title 38 to eliminate (1) the differences in attendance requirements ("absence-reporting") which exist between "degree" and "nondegree" training, and (2) make certain changes in standards-of-academic-progress requirements for "non-degree" training.

Background

The VEP Commission, on pages 102 through 113 of its report, noted that under current law, regulations, and policies there are a variety of distinctions in the treatment of non-college-degree programs of education and college degree-granting programs of education. Among the most notable are different requirements dealing with daily attendance reporting.

The Commission, on page 106 of its report, stated:

> VA Regulations, Section 14203, clearly state that "schools which have veterans or eligible persons enrolled in courses which lead to a standard college degree are not required to submit monthly certification for students enrolled in such courses." The law and the regulations which interpret the law clearly differentiate between veterans pursuing a college degree and other veterans. A veteran in a college-degree program certifies once a year or term as to his attendance and sends the form back to the VA. Veterans in non-degree-granting programs must fill out attendance cards once a month, certifying their absences; have the cards verified and signed by the registrar of the institution or person in charge of veterans' affairs; and then send the Certification of Attendance cards back to the VA.

Further, on page 107 of its reports, the VEP Commission found:

> The Certification of Attendance policy imposes on all veterans who are not pursuing a college degree a requirement that assumes this [certification of attendance] is still a policy in noncollegiate settings, while this may not be true at all. Veterans pursuing a certificate or diploma and attending colleges or institutions must abide by regulations that are not imposed on other veterans attending the same institution.

The Commission viewed attendance-requirement distinctions between degree and non-degree training as arbitrary and urged their removal.

VA, in its response (pages 45–46) to the VEP Commission's recommendation on this issue, agreed.

Committee bill

Section 313 of the Committee bill would (1) amend the "standards of academic progress" requirements under sections 1674 and 1724 of title 38 to require that educational assistance be discontinued in the case of a veteran or eligible person who fails to meet the regularly prescribed standards and practices of the educational institution with regard to attendance, progress, and conduct; (2) amend section 1775(b) to require that, as a condition to approval of accredited courses of an educational institution, a State approving agency must find that adequate records are kept by the institution to show the progress of each eligible person or veteran and that the records must include as a minimum (except for attendance if the educational institution does not have a formal policy or regulations specifying minimum satisfactory attendance standards required for a student to avoid interruption of a course, loss of credit, or dismissal) the requirements under section 1776(c)(7) in regard to the institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct; and (3) amend section 1780(a) to eliminate the prohibition against the payment of educational assistance allowance to eligible veterans or eligible persons enrolled in a course which does not lead to a standard college degree for any day of absence in excess of 30 days in 12-month period, and also eliminate the references to absence-counting in clauses (A), (B), and (C) of the last sentence.

Cost: According to CBO, the enactment of section 313 would entail no significant costs.

Funding for State Approving Agencies for Training Curriculum Development

Section 314 of the Committee bill, which is derived from an amendment proposed in Committee by Senators Cranston and Murkowski, would amend section 1774(a)(2) of title 38 to provide that (1) FY 1990 funding that the Secretary provides to State Approving Agencies (SAAs) for their reasonable and necessary expenses incurred in carrying out their duties may be used for a contract for the development and implementation of a uniform national curriculum for training SAA employees under section 1774A(a)(4); (2) SAAs may not receive reimbursement for administrative overhead expenses incurred in administering such a contract; and (3) such contracting authority shall be used only once and the amount used for this purpose shall not exceed $300,000.

Background

Under section 1774 of title 38, VA enters into contracts with SAA's under which VA provides them with reimbursement (up to an aggregate total of $12 million in any fiscal year) for their reasonable and necessary expenses of ascertaining the qualifications of educational institutions to provide courses to VA-assisted students. Section 1774A(a)(4) of title 38, enacted in the Veterans' Employment, Training, and Counseling Amendments of 1988 (Public Law 100-323), requires the Secretary to "cooperate with State Approving Agencies in developing and implementing a uniform national curriculum, to the extent practicable, for training new employees and for continuing the training of employees of such agencies, and sponsor with the agencies, such training and continuation of training".

In a September 15, 1988, letter to the VA Chief Benefits Director, the President of the National Association of State Approving Agencies (NASAA), Inc., indicated the Association's desire to use the unobligated FY 1988 funds available within the overall $12 million cap to award a competitive contract for the development of the type of national training curriculum described in section 1774A(a)(4). However, the authority for that use of the funds does not exist in current law.

Committee bill

The Committee bill would provide that FY 1990 funding provided by the Secretary to SAAs for their reasonable and necessary expenses incurred in carrying out their statutory duties may be used to fund a competitively-bid contract between the NASAA and a private entity for the development and implementation of a uniform national curriculum for training SAA employees, such contracting authority limited to a single use and the amount used limited to $300,000.

The Committee perceives a direct relationship between the development and implementation of a national training carriculum—for training new employees and for continued training of current employees—and the requirement under section 1774A that SAAs, in carrying out their responsibilities, apply qualification and performance standards based on the standards developed by the Secretary. In this regard, the Committee believes that the SAAs collectively have the expertise, in cooperation with VA, to develop such a national training curriculum. However, the Committee believes that it may be more efficient to do so contractually, through a competitive bidding process, as compared to having all of the SAAs contribute to the development of the curriculum.

Cost: According to CBO, the enactment of section 314 would entail no significant costs.

Proof of Satisfactory Pursuit of a Program of Education

Section 315 of the Committee bill, which is substantively identical to section 7 of S. 1092, would, effective August 1, 1990, amend section 1780(g) of title 38 so as to provide the Secretary with the discretionary authority under all VA-administered educational assistance programs to require monthly self-certification verifying pursuit of training—either degree or non-degree training and for all rates of training, including training on less than a half-time basis—as a requirement for receipt of benefits.

Section 1784 of title 38 requires educational institutions as well as individuals training under the various VA educational assistance programs to report without delay enrollments, terminations, and interruptions of educational pursuit, including changes in enrollment status such as discontinuance of a course. However, by regulation (38 CFR 21.4203, Reports—requirements; 38 CFR 21.4204, Periodic certifications; and 38 CFR 21.4205, Absences) this requirement is applied differently to veterans enrolled in various types of educational and training programs and at degree- versus non-degree-granting institutions.

For veterans pursuing degree programs at institutions of higher learning, schools are generally permitted to certify a veteran's continuing enrollment for up to a one-year period. Additionally, schools are required to have in place a procedure for monitoring a student's pursuit that will enable the schools to report a change in a student's enrollment to VA within 30 days of the date on which it occurs, in order to assist VA in implementing in a timely fashion changes in monthly education assistance allowances. Reductions in monthly educational assistance allowances based on the rate of pursuit are made effective at the end of the month in which the change occurs. A termination of benefits based on withdrawal from all courses is effective on the date on which withdrawal occurs. Failure to report such changes in a timely way may result in liability of both the institution and the student for any resulting overpayments of benefits.

In contrast, in the case of students pursuing non-college degree programs, institutions and training establishments are required to submit daily attendance reports to VA on a monthly basis. (Section 313 of the Committee bill would repeal this requirement.) Effective dates of award actions are generally the same as those for degree programs.

A somewhat different approach is applied in the case of educational assistance benefits for pursuit of a degree under the chapter 30, Montgomery GI Bill. Section 1434(b) of title 38 provides that the Secretary may withhold payment of chapter 30 benefits to trainees pending receipt of the necessary reports and proof of enrollment in and satisfactory pursuit of a program.

Under this authority, VA has instituted a "test program" of self-certifications verifying pursuit for veterans enrolled in degree programs under chapter 30. Briefly stated, a student is required to complete a VA form on a monthly basis certifying enrollment and rate of pursuit. No payment is made to the student for a month until this completed form for that month is received by VA. The educational institution is not required to sign off on the form, and the submission of this monthly self-certification in no way relieves the institution of its responsibility to report changes in enrollment status within 30 days of occurrence.

On page 79 of its report to Congress, the VEP Commission recommended that VA be provided authority under all chapters to require monthly self-certification verifying pursuit of training—with a bar to benefits without it for both degree and non-degree training and for all rates of training (including training on less than a half-time basis)—in the same manner as is now being implemented under chapter 30. In discussing this recommendation, the Commission stated:

> The Commission believes the requirement of a self-certification procedure correctly gives the veteran more responsibility for conscientious use of the benefits in which the individual has made a substantial investment. * * * [G]reater veteran involvement is crucial to the continuing success of GI Bill programs. Expansion of self-certification across the board would insure uniformity and further the objective of shared responsibility.

In addressing this recommendation on page 14 of its Interim Report, VA endorsed its being given this authority, the exercise of which would be dependent, according to VA, upon the outcome of a study currently being undertaken by VA on the subject of self-certification. The VA report noted:

> Monthly certification by veterans of their continued pursuit of a program of education as certified by the school is presently being tested using the chapter 30 educational assistance program. At this time, it is still too early in the test to make a definitive determination on its effectiveness.
>
> * * * If it is found that monthly verification of pursuit by VA-students themselves provides an accurate, timely, and cost-effective verification of the benefits to which they are entitled, VA will certainly consider expanding self-certification procedures for those in receipt of VA education benefits under all chapters.

Following the Committee's June 9, 1989, hearing, the Committee submitted questions to the Secretary of Veterans Affairs in regard to whether the enactment of this section, as well as section 320, which would provide that the effective date of a benefit change based on a change in a student's course load or other change would be the date the change occurred, instead of the end of the month in which the change occurred, would create overpayments or cause delays in the receipt of educational assistance allowance.

The Secretary's response indicated that (a) preliminary results of VA tests of the chapter 30 program show that monthly certifications do prevent debts, and (b) the effective date of change provision would not create overpayments if coupled with the monthly certification requirement.

The Committee notes that this provision of the Committee bill authorizes, but does not require, the use of monthly certifications. The Committee further notes that, in response to concerns raised by NAVPA and PVA, Secretary Derwinski has advised that he would invoke such authority only after first determining that use of monthly certifications would result in an appropriate balance between the competing interests of avoiding overpayments and assuring timely payment of benefits.

Cost: According to CBO, the enactment of section 315 would entail estimated administrative costs of $2 million in both budget authority and outlays in FY 1990 and total estimated administrative costs of $10 million in both budget authority and outlays in FYs 1990–1994.

Reporting Fees

Section 316 of the Committee bill, which is derived from section 4 of S. 1092, would amend section 1784 of title 38 to incorporate veterans pursuing training under the chapter 31 program of rehabilitation for veterans with service-connected disabilities into the count of those on whose behalf VA pays schools a fee to defray the costs they incur in providing VA with mandatory reports and certifications regarding the enrollment of VA-assisted students.

Under current section 1784(c) of title 38, VA annually pays reporting fees to educational institutions and training establishments. This fee is intended to help defray the costs associated with the schools' processing of various reports and certifications required to be submitted to VA on the enrollment of students receiving VA assistance under all VA-administered programs other than chapter 31. Educational institutions are required to report promptly the entrance, re-entrance, change in hours of credit or attendance, interruption, and termination of attendance of each veteran or eligible VA beneficiary. In addition, schools must verify the enrollment of, and delivery of benefit checks to, each veteran or eligible person receiving advance pay.

The certification requirements are very detailed, and the institution must at all times have available for VA inspection all pertinent records and accounts. In addition, institutions must devote time to many requirements which are not reimbursable, such as keeping catalogues current and complete, ensuring that no more than 85 percent of the students enrolled in each program receive VA-administered assistance, assisting VA compliance specialists and state approving agencies personnel in their surveys, correcting deficiencies, and dealing with faculty members regarding the monitoring and reporting of student attendance or withdrawal.

Thus, payment of the reporting fee represents an ongoing investment on the part of VA in the efforts undertaken by schools to ensure that veterans and other eligible persons receive the VA educational benefits to which they are entitled and that such benefits are correctly paid. These efforts help to make certain that Federal funds are not abused or expended on those not entitled to them, and VA reporting fees are part of the extensive system of rules and requirements which have evolved over the years to verify entitlement and compliance.

The annual fee is computed by multiplying $7 by the number of VA beneficiaries training under chapters 30, 32, 34, 35, 36, or 106 (or $11 in the case of individuals on whose behalf an advance payment of benefits is delivered to the institution) who are enrolled at the institution or establishment, generally on October 31.

Among the issues considered by the VEP Commission in preparing its August 29, 1989, report to Congress was adding to the reporting-fee calculations veterans enrolled in training under the chapter 31 vocational rehabilitation program. On page 138 of its recommendations, the Commission urged that such trainees be incorporated into the count of those on whose behalf the reporting fee is paid.

The Commission argued that service-connected-disabled veterans frequently require the provision of services and assistance by the institution above and beyond those usually provided other veteran/students. Further, while noting that a "book-handling" fee—consisting of 10 percent of the costs of books and supplies—is already paid to institutions by VA on behalf of chapter 31 trainees, the CVEP advised that at a great many schools the bookstore operates as a "concession" activity, totally independent of the institution. Thus, in those cases, the bookstore—and not the school itself—is the actual recipient of the book handling fee. The Committee notes that the book-handling charge is also a matter of economy for the Department as it is sometimes used to compensate a book supplier who can more easily and efficiently procure special supplies and equipment for chapter 31 trainees than VA can.

On page 76 of VA's Interim Report in response to the VEP Commission's report, VA stated that it agrees that service-connected-disabled veterans require more assistance and, as had the Commission, acknowledged that the book-handling fee paid by VA on behalf of chapter 31 beneficiaries in many cases does not go to the school. VA indicated its intention to study the inclusion of chapter 31 trainees in the count of those on whose behalf reporting fees are paid. The Committee believes that such a study would yield little additional analysis on this matter.

Cost: According to CBO, the enactment of section 316 would entail no significant costs.

Clock-Hour Measurement of Certain Unit Courses or Subjects Creditable Toward a Standard College Degree

Section 317 of the Committee bill is substantively identical to section 203 of the Administration-requested S. 1003, which is in turn based on the provisions of section 333 of S. 2011 as reported by the Committee last August and passed by the Senate on October 18, 1988, in H.R. 4741. Section 317 would streamline measurement of combined clock-hour/credit-hour course pursuit by replacing the current text of section 1788(e) with provisions for measuring course enrollment by converting the credit hours being pursued to equivalent clock hours and combining this number with the actual number of clock hours concurrently pursued, if any, to determine training time under section 1788(a) (1) or (2).

Currently, section 1788(e) sets forth a method for determining full-time pursuit of a course not leading to a standard college degree that is offered by an institution of higher learning and for which the institution requires one or more unit courses of subjects creditable toward a standard college degree. This method provides for reducing the number of clock hours otherwise required for full-time study, under section 1788(a) (1) or (2), by the percentage which the number of credit hours (represented by such unit courses of subjects) being pursued is of the number of credits required for full-time pursuit under section 1788(a)(4).

The method of measurement proposed in the Committee bill, unlike the existing complex procedures of section 1788(e)(1)(2) that necessitate creating an artificial measurement scale in each case, would simply convert credit hours to equivalent clock hours, thus enabling measurement of college degree courses in the units expressed in section 1788(a) (1) and (2). Moreover, the Committee notes that the measurement criteria under current law require a far greater number of calculations than would be necessary under this provision of the Committee bill. Thus, this provision should simplify such measurement determinations and yield more readily understandable and consistent results.

Cost: According to CBO, the enactment of section 317 would entail no significant costs.

Department of Veterans Affairs Approval of Certain Courses

Section 318 of the Committee bill, which is identical to section 10 of S. 1092, would amend section 1789(b)(6)(B) of title 38 to modify the criteria for determining the applicability of, and exceptions to, both the "two-year" and "85–15" rules (limits on the courses for which GI Bill benefits may be paid) for certain courses provided under contract with the Defense Department so as to take into account individuals training under the MGIB Selected Reserve program (chapter 106 of title 10).

Throughout the 40-plus years of the various GI Bills, many measures have been enacted to foster efficient management and effective use of these important educational assistance benefits. These various provisions were often enacted in response to some abuse or misuse of benefits that had been identified. Three such provisions are the two-year rule, standards-of-progress criteria, and the "85–15 rule".

Two-year rule: Section 1789 of title 38 prohibits the Secretary from approving the enrollment of veterans and other eligible persons in certain courses that have not been in operation for at least two years. By law, this prohibition does not apply to the following:

(1) Courses offered in a public or other tax-supported educational institution.

(2) Courses offered by an educational institution which has been in operation for more than two years if the course is similar in character to the instruction previously given by the institution.

(3) Courses offered by an institution for a period of more than two years despite the fact that the institution has moved to another location within the same general locality or has made a complete move with substantially the same faculty, curricula, and students, without change in ownership.

(4) Courses offered by a nonprofit educational institution of college level and recognized for credit toward a standard college degree.

(5) Courses offered by a proprietary nonprofit educational institution which qualifies to carry out an approved program of education under the authority in title 38 for special assistance for educationally-disadvantaged veterans, as long as the institution has been in operation for more than two years.

(6) Courses offered by an educational institution under contract with the Department of Defense that are given on or near a military base, are available only to active duty military personnel and/or their dependents, and have been approved by the State approving agency of the State in which the base is located.

By law, the two-year rule does apply to courses offered by a branch or extension of:

(1) A public or other tax-supported institution where the branch or extension is located outside of the area of the taxing jurisdiction providing support to the institution.

(2) A proprietary profit or proprietary non-profit educational institution where the branch or extension is located beyond the normal commuting distance of the institution.

The law (section 1789(b), last sentence) authorizes the Secretary to waive these requirements if doing so is determined to be in the best interest of the veteran and the Federal government.

"85-15 rule": This rule, codified in section 1673(d) of title 38, provides generally that veterans and other eligible persons may not be enrolled in any course in which more than 85 percent of the enrollees have all or part of their tuition, fees, or other charges paid to or for them by the VA or by the educational institution. This requirement generally exempts any course offered at an institution where the total number of students enrolled under chapter 30, 31, 32, 35, or 36 or title 38 is 35 percent or less. Separate computations are made for the main campus and any branches of an institution.

The "85-15 rule" reflects what might be termed a "marketplace" approach to the administration of educational assistance benefits. It is based on the expectation that an institution and the courses that it offers should be of sufficient quality and value to attract a significant fraction of students—the "consumers" of education—not dependent on VA educational assistance and thus generally willing to invest significant resources of their own.

In its report to Congress, the VEP Commission addressed the issue of the advisability of retaining these two provisions of law and regulations designed to discourage misuse or abuse of educational assistance benefits. Beginning on page 164 of its report, the Commission noted the effectiveness with which the two-year rule and the "85-15 rule" (as well as the standards-of-progress criteria) have encouraged appropriate use of GI Bill benefits, calling these three requirements "exemplary of controls which should be reaffirmed as methods of controlling possible misuse of GI Bill benefits." Further, the Commission recommended that these provisions be applied across the board to all individuals training under the chapter 106 program and be incorporated into the criteria for determining waiver or applicability of both the two-year rule and the "85-15 rule".

In this regard, on page 165 of its report, the Commission cited the provisions of law that exempt from the two-year rule and from the 85-15-ratio requirement certain courses offered by an institution under contract with the Department of Defense on or near a military installation that are available only to active duty military and their dependents. Noting that these exemption authorities, however, do not take into account individuals who are training under the chapter 106 program for the Guard and Reserves, the Commission recommended that these authorities be amended to take these chapter 106 trainees into account as well.

VA, as stated on page 93 of its Interim Report, agreed with the Commission's position that current laws now provide adequate control and safeguards against abuse and that they should be reaffirmed. VA also agreed with the Commission's recommendation that the waiver provisions of the two-year rule and the 85-15 rule be applied to those individuals training under the chapter 106 program and has already initiated discussions with the Department of Defense on this matter.

Cost: According to CBO, the enactment of section 318 would entail no significant costs.

Limitations on Changes of Programs of Education

Section 319 of the Committee bill, which is derived from section 6 of S. 1092, would, effective August 1, 1990, amend section 1791 of title 38 so as to (1) repeal the existing limit on changes of educational program which generally permits no more than two changes of program (except for changes necessitated by circumstances beyond the student's control); and (2) in the case of second and subsequent changes of program, permit VA approval only if (a) the veteran or person accepts educational or vocational counseling services referred to in section 1663 of this title; and (b) the Secretary determines, on the basis of the results of the educational or vocational counseling, that the change is suited to the veteran's or person's aptitudes, interests, and abilities.

Under section 1791 of title 38, a veteran or other eligible person is generally permitted not more than one change of program of education. One additional change of program may be approved by the Secretary if it is found: (1) that the program of education which the individual proposes to pursue is suitable in terms of aptitudes, interests, and abilities, and (2) in the case of an individual who interrupted or failed to make progress in the pursuit of a prior program, that there exists a reasonable likelihood that there will not be a recurrence of the interruption or failure to progress. Additional changes of program may not be approved unless the Secretary finds that the change is necessitated by circumstances beyond the individual's control.

As implemented by VA in 38 CFR 21.4234, a change of program is defined as "a change in the educational, professional or vocational objective for which the veteran or eligible person entered training and a like change in the type of courses required to attain a new objective." A veteran or an eligible spouse training under chapter 35 is permitted one "optional change of program", if the previous program was not interrupted due to lack of application, misconduct, or neglect.

Other changes of programs may not be made solely at the option of the veteran or eligible person and must be approved by the VA prior to payment of any educational assistance allowance. These changes included:

(1) A second or subsequent change of program made by a veteran or eligible spouse or surviving spouse.

(2) An initial change of program made by a veteran or eligible spouse if the first program was interrupted or discontinued due to misconduct, neglect, or lack of application.

(3) Any change of program made by a child enrolled in training under chapter 35.

These changes will be approved by VA if the program of education to be pursued is suitable to the individual's aptitudes, interests, and abilities and, in the case of a change made by an individual whose first program was interrupted by misconduct or the like, if there is a reasonable likelihood there will not be a recurrence of an interruption or a failure to progress.

Subsequent changes of program may only be approved if the changes are necessitated by circumstances beyond the control of the veteran or eligible person. As set forth in the regulation, these circumstances include, but are not limited to:

(1) The course being discontinued by the school when no other similar course leading to the same objective is available within normal commuting distance.

(2) Unexpected financial difficulties preventing completion of the last program because of the overall costs of the program needed to reach the objective.

(3) The veteran or eligible person being required to relocate because of health reasons in an area where training for the last objective is not available within normal commuting distances.

Changes of program are not deemed to include the pursuit of a first program which is a prerequisite for entrance into a second program or a transfer from one school to another when the program at the second school leads to the same objective and does not involve a material loss of credit (generally 12 credit hours) or increase in the length of time needed to complete the program of study.

A material loss of credit, however, will result in a change of program. For example, a college student who has earned 100 of the 140 credit hours required for a degree in economics who changes to a history major and has all but fifteen credits transferred to the new major would be charged with a change of program.

In other instances, a change of program can result even if there is on change of objective. For example, a student completes 120 credits in a 130-credit bachelor's degree program and then changes to another school. The second school accepts all credits from the first school but requires that the student complete 35 credits in residence. This is a change of program, because the student will be required to extend the time necessary to obtain the original objective by more than 12 credits.

Program changes also include changes in the mode or type of training. For example, a change of program would be charged for entrance into a resident training program in diesel engine repair following the completion of a home-study course in the same field.

On page 86 of its report to Congress, the VEP Commission recommended abolishing the limit on the number of changes of program contained in title 38 (while retaining restrictions for failure to progress), declaring that if found "no purpose in limiting the number of changes a student may make." The Commission explained:

> * * * there is potential under existing law that a veteran[-student] could be unreasonably denied access to benefits in which a substantial investment has been made. For example, a veteran who completes a course through home-study while on active duty, enrolls in a certificate course in autombile repair following discharge from service would be charged with a first "optional change of program".

> After several weeks of training, the veteran decides that this field of endeavor is not suitable and applies and is approved for a change to a certificate program in heating, venting, and air conditioning. At this point, any subsequent changes of program—to a degree program or an OJT opportunity—are barred unless it can be demonstrated that the change is necessitated by circumstances beyond the veteran[-student]'s control. Should the [individual] decide that it would be better to pursue a college education or that the opportunity exists to put skills to use in an apprenticeship program, no further use of GI Bill benefits would be possible for these purposes.

The Commission further points out that this provision would seem to impose an unnecessary requirement on VA to make a judgment call relating to the veteran[-student]'s use of benefits. At the very least, it presents another opportunity for inconsistency in the system in that two different VA adjudicators could decide similar cases in entirely different ways.

Additionally, according to the Commission, there is significant potential for unnecessary inequities in the current system. For example, a veteran training under the Montgomery GI Bill, already charged with two changes of program, could complete an initial educational objective by attaining a bachelor of science degree in nursing but still have three months of educational assistance remaining. Use of these benefits for the pursuit of an additional program, e.g., a certificate in gerontology, would be barred. However, a similarly-circumstanced veteran with no changes of program charged, who chooses to use the three remaining months of benefits for an automobile repair course would be permitted to pursue this program as it would be a first "optional" change.

It is conceivable that if the limit were removed, there would be a few individuals who could, in essence, squander 36 or 45 months of benefits without ever achieving an educational, vocational, or professional goal or objective. Without question, that is somewhat troublesome. However, with the inequities inherent in the current system, given the fact that students training under the new Montgomery GI Bill are expected to be more mature, more serious students, and that these are benefits in which the majority of veterans will have made an investment, this objection to removing the limit does not seem to justify the effect of a possible "bar to future benefits" in the case of more than two changes of program.

Also on page 86 of its report, the VEP Commission recommended instituting a counseling requirement for changes of program beyond an initial change. The Commission stated that:

> * * * in order to assist veterans in the most effective use of their benefits, the Commission recommends that a requirement for VA-approved counseling be instituted for changes of program after a first optional change. This would give the veteran the opportunity to review goals and objectives, as well as interests, abilities, and aptitudes, that may enhance the educational experience. As discussed elsewhere in the Commission's recommendations, upfront investments in counseling and educational guidance would

likely result in more effective use of benefits and could serve to limit substantially the number of changes of program.

In response to the Commission's position to abolish the limit on the number of changes of program an otherwise eligible person may take, VA noted its opposition on page 23 of its Interim Report. Acknowledging that its regulations for implementing the change of program provision in the law (38 CFR 21.4234) "may very well be * * * administratively cumbersome", VA urged that some means of administering the law more simply and equitably be derived through changes in procedure and/or regulation, thereby obviating the need for eliminating the limits on changes of program altogether.

VA agreed, on page 23 of its Interim Report, with the Commission's recommendation that counseling be provided for changes of program beyond an initial change, noting that such a requirement would greatly assist veteran-students in the most effective use of their benefits, provide them with the opportunity to review educational objectives, interests, and abilities over time, and would likely serve to limit substantially the number of changes of program.

The Committee notes that VA data indicate that during 1988 only 2.79 percent of all trainees had a change of program beyond an initial change. Thus, the Committee believes there is little justification for the administratively cumbersome, judgmental, and time-consuming process under which VA adjudicators must carry out current section 1791(c) of title 38 in regard to granting, or not granting, a third or subsequent change of program to a veteran or eligible person. Likewise, the Committee sees no need to put a veteran-student at risk of being denied the use of VA benefits when that individual seeks to make such a subsequent change to a program that is suitable for him or her. This is particularly true in the case of chapter 30 and 32 participants, who constitute the overwhelming majority of those who would be affected by this provision and who, in fact, have made a financial investment in order to acquire their eligibility.

Cost: According to CBO, the enactment of section 319 would entail no significant costs in FY 1990 and total estimated costs of $4 million in both budget authority and outlays in FYs 1990–1994.

Effective Date of Adjustments of Educational Benefits

Section 320 of the Committee bill would amend section 3013 of title 38 to provide that, in programs as to which VA exercises the proposed discretionary authority to require monthly self-certifications, as described in the discussion of section 316 above, the effective date of an educational benefits adjustment based on a change of a student's course load or other change in aggregate training time would be the date of the change rather than the end of the month in which the change occurs.

Background

Section 1784 of title 38 requires veterans and other individuals training under the various VA education programs as well as educational institutions to report, without delay, enrollments, terminations, and interruptions of educational pursuit, including changes in enrollment status such as discontinuance of a course.

In the case of institutions of higher learning and veterans enrolled in degree programs, schools are required by regulation (38 C.F.R. 21.4203) to have in place a procedure for monitoring student pursuit that enables a school to report a change in a student's enrollment to VA within 30 days of the date on which the change occurs. Failure to report changes in a timely manner may result in liability for overpayments for both the institution and the student.

In the case of degree-level training, reductions in benefits based on changes in the rate of pursuit—for example, a reduction from full-time benefits to three-quarter-time benefits in the case of a veteran who discontinues a course and drops from 12 hours to nine hours of pursuit—are made effective at the end of the month in which the change occurs.

In its report to Congress, the VEP Commission recommended that adjustments in benefits under all VA education programs that are required because of changes in training time be made effective on the date of the actual event, rather than at the end of the month in which the change occurs. On page 81 of the report, the Commission noted that it found little merit in continuing the "end-of-month" rule for the reductions in awards based on reductions in training time. In discussing that rule, it stated:

> Both beginning dates and ending dates of awards based on enrollment in and termination of training are based on the date of the actual event. For example, a veteran enrolled in 12 credit hours of training that begins on January 15 and lasts until May 7 will receive three months and 22 days of full-time benefits, with entitlement charged accordingly. If the veteran terminates this training on March 15, withdrawing from all 12 credit hours, the veteran will have benefits terminated effective March 15 and be charged two months of entitlement.
>
> However, if that veteran drops six of those 12 credits on February 2, the reduction from a full-time to half-time rate of benefits is not effective until February 28.

Continuing with this example, since the veteran is required to inform VA in the February certification of the change in training time prior to the payment of any benefits for the month of February, the Commission urged that the benefits be paid accordingly and entitlement charged based on that information. The Commission pointed out that "although the immediate consequence to the veteran may be a reduction in benefits, the net result is 'saved' entitlement."

On page 14 of its Interim Report, VA stated that it agreed with the premise of the Commission's recommendation regarding the change in effective dates and, in connection with the results of the VA's ongoing chapter 30 self-certification study to be completed this September, will consider initiating procedures to propose legislative action as well as regulatory change to reflect this policy.

Committee bill

The Committee bill would provide that the effective date of an educational benefits adjustment based on a change of a student's course load or other change in aggregate training time would be the date of the change rather than, as under current law, the end of the month in which the change occurs. However, this provision would be made effective only if VA elects to exercise the discretionary authority provided for in section 316 of the Committee bill, whereby the Secretary would be granted the discretionary authority under all VA-administered educational assistance programs to require monthly self-certification.

The provision as introduced in S. 1092 had no requirement that implementation of this provision be tied to required monthly self-certification by veteran-students. The Committee believes it would be administratively infeasible to require VA to implement a new policy relative to effective dates of a change in educational pursuit without the benefit of the recurring and updated information that would be provided by monthly self-certifications.

Cost: According to CBO, the enactment of section 320 would entail no significant costs.

Technical and Clerical Amendments

Section 321 of the Committee bill, which is derived from section 204 of the Administration-requested S. 1003, would (1) amend section 1434(a) of title 38 to make inapplicable to the chapter 30 (Montgomery GI Bill) program section 1780(f), which inappropriately makes the chapter 34 (Vietnam-era GI Bill) and chapter 35 (Survivors and Dependents Educational Assistance) rates for less than half-time training applicable to chapter 30, and to add a new subsection (c) to section 1434, which would provide for the same method of payment as under chapter 34 and 35 but using chapter 30 rates; (2) amend section 1633 to provide for a proportionately reduced charge to entitlement when a veteran pursuing apprenticeship or other on-job training under chapter 32 (Post-Vietnam Era Veterans' Educational Assistance Program) receives a reduced monthly allowance because of having failed to work 120 hours in a month; and (3) amend section 1790(a)(2) to delete an outdated reference to the prepayment of monthly educational assistance allowances.

Section 1434(a) of title 38 makes certain enumerated provisions of chapter 36 (Administration of Educational Benefits) applicable to the administration of the chapter 30 program. One such applicable provision, section 1780(f), which deals with the payment of allowances for less than half-time training, inappropriately provides for paying chapter 30 part-time participants at chapter 34 and 35 rates rather than chapter 30 rates. The Committee bill would amend section 1434 so as to make section 1780(f) inapplicable to chapter 30 and provide for payments based on chapter 30 rates.

Currently, section 1633 of title 38, relating to apprenticeship and other on-job training under chapter 32, is silent on the appropriate reduction to be made in chapter 32 entitlement when a veteran pursuing an apprenticeship or other on-job training program under chapter 32 fails to work 120 hours in a month. The Committee bill would add a new subsection (d) to section 1633 to provide that in such cases, the reduction in chapter 32 entitlement would be proportionate to the reduction that is made in the veteran's monthly educational assistance allowance.

Under section 1790(a)(2) the Secretary may disapprove educational institutions for the enrollment of eligible veterans or eligible persons when the institution has a policy or practice that has the effect of denying them the benefit of the prepayment of VA allowances. However, VA no longer "prepays" monthly educational benefits—that is, it no longer pays the beneficiary an allowance for the month of pursuit prior to the actual month of such pursuit. Instead, VA "postpays" benefits—pays the allowance following the month of pursuit. The Committee bill would delete references to prepayments.

Section 1790(b)(3)(A) provides that VA may suspend all VA-administered educational benefits in the case of a school that has violated one or more of the recordkeeping or reporting requirements in chapters 32, 34, 35, and 36. However, there is no express provision which would permit VA to suspend benefits if an institution violated these same requirements under chapter 30, the Montgomery GI Bill. This produces the anomalous situation whereby VA may suspend benefits under chapter 30 for violations of the recordkeeping or reporting requirements in other chapters, but not those in chapter 30 itself. The chapter 30 program is now a permanent, major education benefits program which should be covered by all general provisions for assuring proper payment of benefits by VA. Accordingly, the Committee bill would amend section 1790(b)(3)(A) to add chapter 30 to the list of chapters enumerated therein.

Cost: According to CBO, the enactment of section 321 would entail no significant costs.

TITLE IV—HOME LOAN

Title IV of the Committee bill, derived from S. 1158, would establish a new VA home loan guaranty program, the operations of which would be financed through a new revolving fund—the Home Loan Guaranty Fund (HLGF)—into which the Federal Government would make regular contributions totaling 0.75 percent of each guaranteed loan. Under the new program, fees generally would be slightly increased and recipients of loans and individuals assuming VA loans after the new program is established generally would not be liable to VA for any payments VA makes as guarantor. Title IV also would modify the budgetary accounting for sales of VA vendee loans to investors with recourse and alter the formula VA uses to determine whether it will acquire a property in foreclosure.

Background

History of the program: The VA home loan guaranty program was established by the Servicemen's Readjustment Act of 1944 to assist veterans who, because of their military service, had been unable to achieve either the savings necessary to make a downpayment on a home or the creditworthiness to obtain a loan without one. Under that 1944 Act, the program was to expire five years after the end of World War II. However, due to its great popularity and success, the program was extended several times until it was made a permanent benefits program in 1970. It currently is codified in chapter 37 of title 38, United States Code.

Since its inception in 1944, the program has been changed and expanded many times, guaranteeing loans totaling more than $300 billion and helping more than 13 million veterans to purchase homes. With a VA guaranty, a veteran now can obtain a mortgage for a term of up to 30 years and with an interest rate no greater than the maximum set by the Secretary of Veterans Affairs and adjusted periodically to meet the demand of the loan market.

Traditionally, the vast majority of VA-guaranteed loans have cost the government little to guarantee and have provided significant benefits to veterans and to society because veterans generally have proven good credit risks. From its inception in 1944 until 1961, the home loan guaranty program was funded through appropriations of just $730 million in VA's Readjustment Benefits account—an average of $49.9 million a year for that 17-year period during which 5.6 million VA-guaranteed loans were made.

More recently, however, the economic downturn in certain parts of the country—principally the oil producing states of Texas, Oklahoma, and Colorado—and resultant higher default and foreclosure rates, including those for loans guaranteed by VA, have threatened the viability of the VA program. Under these circumstances, property values often declined so much that outstanding loan balances exceeded the value of the property. These factors, combined with program management problems in appraisals, underwriting, loan management and servicing, and property acquisition, management, and sales have meant that the cost to VA of acquiring, managing, and reselling properties has exceeded the income realized by VA through property sales and loan fees. As a result, the program has incurred significant deficits requiring increasing appropriations to keep the program alive. Program funding has proven so volatile that even the large deficit appropriations provided in regular appropriations measures since 1981 sometimes have fallen short, requiring Congress to provide large supplemental appropriations. For FY 1989 alone, the Loan Guaranty Revolving Fund (LGRF) received appropriations of $778 million—$658 million in regular appropriations and $120 million in supplemental appropriations. In FY 1988, the LGRF required an appropriation of $917 million—$390 million in regular appropriations and nearly $527 million in supplemental appropriations.

The following table indicates the mounting appropriations trend.

TABLE 2.—DEFICIT APPROPRIATIONS AND TRANSFERS TO LGRF 1980–89

[By fiscal years, in millions of dollars]

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Appropriation	0	0	0	0	$100	$306.6	$200	$100	$389.8	$658
Supplemental appropriation	0	0	0	0	0	0	0	0	526.6	120.1
Transfer from direct loan revolving fund	$200	$200	$50	$300	230	0	0	110	0	0
Transfer from readjustment benefits account	0	0	0	0	0	0	0	0	200	0

VA's home loan guaranty program is financed primarily through the LGRF, which funds guaranty payments, acquisition of foreclosed properties, and certain administrative expenses. LGRF receipts include proceeds from sales of foreclosed properties acquired by VA and from the sales of loans extended by VA to finance VA's sale of such properties, transfers from the Direct Loan Revolving Fund and the Readjustment Benefits account, direct appropriations, and fees charged to recipients and assumptors of VA loans. VA charges a 1-percent loan fee to all veterans and servicemembers except those with compensable, service-connected disabilities. Likewise, no fee is charged to surviving spouses of those who die from service-connected disabilities or spouses of certain prisoners of war and those missing in action. Those who assume VA-guaranteed loans currently pay a 0.5-percent fee. The LGRF also receives a 1-percent loan fee from individuals for extensions of credit from VA (known as "vendee loans") to finance their purchase of foreclosed properties acquired by VA in liquidation sales.

Recent legislation: It is unrealistic to expect a benefits program to incur no costs. But when the costs of this program have continued to increase sharply, the Veterans' Affairs Committees have taken the position that Congress must try to determine the reasons for the increase and take steps to minimize program costs, especially in light of the towering Federal deficit. Thus, over the last five years the Committees have recommended, and Congress has taken, steps to address many of the problems the program has faced in the 1980s.

The Deficit Reduction Act of 1984 (Public Law 98-369) included provisions establishing criteria (called the "no-bid formula") for determining when VA must pay the guaranty on a foreclosed property securing a VA-guaranteed loan, instead of acquiring the property at the liquidation sale, and prescribing the proportions of foreclosed property sales that VA may finance through vendee loans. Under present section 1833(a)(1) of title 38, at least half, but not more than 65 percent, of VA foreclosed-property sales must be made with vendee-loan financing. The 1984 legislation also increased from 0.5 percent to 1 percent the fee (originally enacted in 1981 in Public Law 97-253 to reduce the deficit) charged for VA-guaranteed loans, extended the fee to vendee loans, and required that receipts from the fee be deposited in the LGRF rather than the general Treasury.

The Veterans' Benefits Improvement and Health Care Authorization Act of 1986 (Public Law 99-576), based on legislation developed by the Committee (S. 1887), required VA to establish credit-underwriting criteria for lenders to follow in evaluating applications for VA home loans, to establish uniform qualifications for appraisers and lists of appraisers approved by VA for appraising property used as security for VA-guaranteed home loans, and to compile information on common factors contributing to foreclosures on VA-guaranteed loans.

In 1987, the Committee developed legislation, enacted in Public Law 100-198, that made various changes to reduce the program's dependence on taxpayer funds, including requirements for better counseling of veterans who are in default, for the underwriting of assumptions, and for a 0.5-percent fee on assumptions.

On February 29, 1988, Congress enacted Public law 100-253, introduced as S. 2022 by Chairman Cranston, Ranking Minority Member Murkowski, and Senators Bentsen and Gramm. That law allows VA to reduce or waive the 5-percent downpayment requirement for vendee loans (previously enacted in Public Law 100-198) to the extent necessary to sell the VA-acquired property.

On April 28, 1988, the Senate passed S. 2049, later enacted as Public Law 100-689 with Senate provisions (in title III) authorizing interest-rate reductions for vendee loans as a tool to help market VA-acquired properties, establishing creditworthiness requirements for loan assumptions, and expanding VA's authority to use money from the LGRF for certain costs of administering the program.

Overview of Title IV

Despite the best efforts of Congress over the past several years, the VA home loan program continues to experience large losses. The Committee is convinced that the program needs a new approach to ensure that this important veterans' benefit survives into the 1990s.

Title IV of the Committee bill would restructure the VA home loan program and make a variety of improvements designed to enhance its value to veterans, maintain its solvency, and reduce its dependence on taxpayers' funds—without compromising basic program goals. The new program would be financed through a new revolving fund, known as the "Home Loan Guaranty Fund" (HLGF), that would supersede the current LGRF and provide a fresh start for the major program revisions in title IV, unburdened by the fiscal problems of the current LGRF. This new fund gradually would replace the LGRF, as loans made before the effective date of the new program mature and, eventually, are retired.

The Committee reluctantly has proposed modest increases in loan fees in exchange for generally indemnifying veterans and assumptors from liability to VA in case of default.

Title IV also contains several innovative mechanisms to ensure continued, adequate funding for the program. The bill would authorize VA, after providing advance notice to the Congress, to make limited, uniform increases in the statutory loan fees if the program faces imminent insolvency. Perhaps most important, title IV would establish a pay-as-you-go system of Government funding by providing for regular Government contributions to the HLGF and providing similar Government contributions in lieu of fees that otherwise would have been paid by borrowers who would be exempt under the new program (and are exempt under the current program). Title IV also contains provisions to create incentives for downpayments, thereby recognizing that VA incurs lower costs in guaranteeing loans for homes in which the borrower has substantial equity, because such borrowers are less likely to default.

The overhaul of VA's home loan program embodied in title IV would ensure that the HLGF remains solvent through the end of the Twentieth Century, according to the Congressional Budget Office's estimate for S. 1158 as introduced, without considering any use that might be made of VA's standby authority to make limited increases in loan fees.

Establishment of Home Loan Guaranty Fund; Government Contribution

Section 401(a) of the Committee bill, which is derived from section 2(a) of S. 1158, would add a new section 1824A to chapter 37 of title 38, to (1) establish a new revolving fund, the HLGF, to finance the operations of VA's loan guaranty program with respect to loans made after September 30, 1989; (2) require the Federal Government to contribute to the new fund 0.25 percent of the loan amount in the fiscal year in which a loan is made and in each of the next two fiscal years (except for loans made in FY 1990, for which the Government contributions would be delayed until FYs 1991, 1992, and 1993); and (3) require the Secretary of the Treasury to invest surplus HLGF funds in Government securities.

Background

The financing of the VA-guaranteed loan program currently is provided through the Loan Guaranty Revolving Fund (LGRF). Income sources for the LGRF include loan fees from borrowers and from those who assume VA-guaranteed loans, proceeds from the sale of homes VA acquired as a result of defaults on VA-guaranteed loans, and proceeds of VA loans (called "vendee loans") made to finance the purchase of VA-acquired properties. The LGRF, established in 1962, originally remained solvent through receipts from the guaranteed-loan program. When the LGRF experienced shortfalls, VA transferred funds to the LGRF from the Direct Loan Revolving Fund (DLRF), which has surpluses from the program under which VA previously provided direct loans to veterans purchasing homes. Current law requires transfer of any surplus in the LGRF to the general Treasury.

A major source of funds for the LGRF began to evaporate in FY 1981 when the Department of Housing and Urban Development-Independent Agencies Act, 1981 (Public Law 96-526) limited the direct-loan program to specially adapted housing. Each year since then, Congress has continued this limitation in the VA appropriations measure, and the DLRF has dwindled. The effects of substantial reductions in that source of funding were compounded by the downturn in economic conditions in the 1980's in certain parts of the country, which has led to increased foreclosures of VA-guaranteed and other types of home loans. The LGRF has required large appropriations in some recent years to meet its obligations. In the current fiscal year alone, Congress has had to appropriate a total of $778 million—$658 million in the regular appropriations (Public Law 100-404) and $120 million in the Dire Emergency Supplemental Appropriations Act of 1989 (Public Law 101-45).

Committee bill

The HLGF, as established under section 401(a) of the Committee bill, would finance operations of the VA loan guaranty program with respect to loans guaranteed or assumed after September 30, 1989. The HLGF would be the focus of the major revisions in the VA-guaranteed loan program instituted by the Committee bill.

The HLGF would receive deposits of loan fees collected after September 30, 1989, Government contributions, and income from the sale of VA-acquired properties and from investments of any surplus money in the HLGF. Payments would be made from the HLGF to pay the claims of holders of loans made or guaranteed by VA after September 30, 1989. The LGRF would continue to operate for loans originally made before the effective date of the new program, except for loans that are assumed after that date, which would fall under the new fund. If the Secretary of Veterans Affairs determines that the new fund contains more money than necessary to meet current requirements, the Secretary of the Treasury would be required to invest the surplus funds in Federal Government securities, but the principal and earnings would remain HLGF assets.

Establishment of this separate, new fund would allow more accurate evaluation and monitoring of the loan guaranty program as it would be restructured under this bill, unaffected by operations under the current program. At the Committee's June 22, 1989, hearing on S. 1158, Deputy Secretary of Veterans Affairs Anthony J. Principi testified, "We * * * support the general concept of S. 1158 [and] * * * the overall concept of the new guaranty fund."

New section 1824A also would provide for government contributions to the HLGF of 0.25 percent a year for the first three years of any loan made after September 30, 1989. The three payments of Government contributions for loans made during FY 1990 each would be delayed for one year.

Under current law, there are no regular government contributions to the LGRF. Rather, the LGRF relies on *ad hoc* appropriations to meet funding shortfalls. Regular systematic government contributions, together with slightly increased fees from veteran-home-buyers and assumptors, should help ensure the long-term, stable operation of this important program of such major benefit to our Nation's veterans—in contrast to the uneven, sometimes very large appropriations requirements for maintaining the current program that have threatened the continuing viability of VA loan guaranties as a benefit program.

At the Committee's June 22, 1989, hearing, witnesses for the Mortgage Bankers Association and the National Association of Realtors expressed concern that if the estimates of loan guaranty activity on which appropriations for the government's contributions for a particular fiscal year were based turned out to be too low, the resulting shortfall in the contributions might require a cut-off in VA's issuance of guaranties. VA's testimony and August 7 official report on S. 1158 raised a similar thesis.

The Committee notes that there is absolutely no language in the Committee bill that would produce that result and that such a result is not intended. The government contributions, along with government payments of fees for borrowers who are exempt from paying the fee, simply reflect a more systematic means of providing the government support needed for the operations of the loan guaranty program. If the funding provided for a particular fiscal year were to fall short of the amount required to make the government's contributions and fee payments in full, it is the Committee's intention that the shortfall be made up in a supplemental appropriation for that fiscal year or in a regular or supplemental appropriation measure for a subsequent fiscal year. As is the case with respect to the LGRF under the current program, if the HLGF were to become insolvent, the payment of guaranty claims—not the issuance of guaranties—would have to be suspended until additional funding is secured through collection of fees, sales of foreclosed properties or loan assets, enactment of appropriations, or a combination of these methods.

The Committee notes, however, that the restructured fees, the planned, regular funding, and other improvements made by the Committee bill make HLGF insolvency a far more remote possibility than is LGRF insolvency under the current program. CBO has projected that the HLGF would require no funding other than that provided in the Committee bill through the end of this century. Any such need for additional HLGF funding would have to be met through appropriations.

S. 1158 as introduced did not delay the Government contributions for loans guaranteed during FY 1990. The delay in these contributions, combined with a similar delay in Government payments for veterans exempt under section 402 from paying loan fees, will reduce the FY 1990 budget authority costs of the legislation by $52 million in order to conform to the Committee's FY 1990 allocation under section 302(a) of the Congressional Budget Act. That allocation did not provide new budget authority for this or any other VA home-loan provisions. The change has no effect on outlays or the deficit.

A June 13, 1989, Congressional Budget Office analysis of S. 1158 as introduced indicated that the new HLGF would remain solvent through the 1990s and would result in savings of $2.12 billion in outlays and $1.12 billion in budget authority through FY 1994. The CBO estimate did not factor in the Secretary's authority under section 402 to make limited, uniform increases in the statutory loan and assumption fees, a provision that would provide an additional cushion against any future insolvency.

Cost: According to CBO, enactment of sections 401 to 403 would result in estimated savings of $7 million in budget authority and $190 million in outlays in FY 1990 and total estimated savings of $75 million in budget authority and $1.06 billion in outlays in FYs 1990–1994. The model CBO used to prepare its cost estimate interrelates the various obligation and collection activities of the home loan program. Its cost estimates for sections 401 to 403 are combined because of these interrelationships.

Annual Submission of Information on the Loan Guaranty Revolving Fund and the Home Loan Guaranty Fund

Section 401(b) of the Committee bill would add a new section 1834 to title 38 to require VA to include in its annual budget submission to the Congress certain information about the current and projected operations and financial status of the Loan Guaranty Revolving Fund (LGRF) and the new Home Loan Guaranty Fund (HLGF).

Current law does not require VA to submit specific financial data concerning the existing LGRF, although VA does provide certain detailed information in this regard in documents it submits in justification of the President's budget for the LGRF.

The information that new section 1834 of title 38 would require VA annually to submit to the Congress would include any projected needs for supplemental appropriations during the current fiscal year or for regular appropriations during the following fiscal year for the LGRF and HLGF and estimates of the revenues that will accrue to the LGRF and HLGF from each possible source, including Government contributions for each new loan and payments in lieu of fees from exempt borrowers, investment income, loan and loan-assumption fees, sales of properties, and loan asset sales. Each of these categories of income would be further subdivided according to the type of property for which the loan was made, such as previously occupied conventional homes, manufactured homes, and newly constructed homes.

The Committee intends that the information submitted in compliance with the new reporting requirements would include a breakdown of the number and costs of all default terminations by the manner of their disposition, such as property acquisition, no-bid, third-party upset, deed in lieu of foreclosure, or assumption. The breakdown also should identify costs and receipts associated with loans for manufactured and conventional housing.

The Committee stresses that, in addition to the specific items mentioned above, it intends that VA continue providing all of the data currently included in its budget documents and also provide all of the same kinds of data with regard to the HLGF.

This section was added to the provisions in S. 1158 as introduced in order to provide the Congress with a clear picture of the assets and liabilities of the two funds and of the old and new programs that would coexist under the Committee bill.

Cost: (See discussion of section 401(a), above.)

Loan Fee

Section 402 of the Committee bill, which is substantively similar to section 2(b) of S. 1158, would amend section 1829 of title 38 to (1) increase generally the current fee on VA-guaranteed loans from 1 to 1.25 percent of the loan amount but decrease the fee for veterans who make downpayments of certain, modest amounts; (2) continue the current 1-percent fee for vendee loans; (3) increase the current loan-assumption fee from 0.5 percent to 0.75 percent; (4) continue the current fee exemption for service-disabled veterans and the spouses of those who die from service-connected disabilities or are prisoners of war or missing in action and require the Government to pay the fees for those borrowers; (5) authorize VA to raise the fee levels uniformly to no more than 20 percent above the statutory fee if the new HLGF is facing imminent insolvency and to decrease them uniformly to no lower than the statutory levels if economic circumstances later improve; and (6) repeal the September 30, 1989, expiration date for the fees.

Background

When Congress established the LGRF in 1962, VA-guaranteed home loans did not require a fee. The first fee charged to veterans for a VA-guaranteed loan was enacted as part of the Veterans Readjustment Benefits Act of 1966, Public Law 89-358. Under that law, veterans who entered on active duty during the post-Korean-Conflict era (after January 31, 1955) paid a 0.5-percent fee to obtain a VA-guaranteed loan. The loan-fee provision of the 1966 law expired in 1970.

The Omnibus Budget Reconciliation Act of 1982, Public Law 97-253, again imposed a 0.5-percent fee, effective October 1, 1982, through September 30, 1985, on all veterans other than those with compensable service-connected disabilities. The fee was not imposed on loans to spouses eligible for VA-guaranteed loans—the spouses of prisoners of war and of those missing in action and the surviving spouses of those who died from service-connected disabilities.

The Deficit Reduction Act of 1984, Public Law 98-369, raised the fee to 1 percent; imposed an identical fee on vendee loans (VA extensions of credit to finance the sales of homes VA acquired as a result of a default on a VA loan); extended the fee through FY 1987; and provided for the receipts to be deposited in the LGRF (rather than in the Treasury as under prior law).

The fees expired briefly at the end of FY 1987 but on October 16, 1987, were reinstated for 31 days by Public Law 100-136.

On December 21, 1987, the fees were reinstated again, through FY 1989, by Public Law 100-198. That law also imposed a 0.5-percent fee on assumptions of VA loans.

Committee bill

Section 402 of the Committee bill would make several changes in the fee structure for various types of VA home loans. In return for the provision in section 403 of the bill generally providing that veterans and eligible spouses receiving VA loans would not be liable to VA in case of default and in order to make the new program solvent on a long-term basis, the Committee bill would repeal the September 30, 1989, expiration date for the fees and generally would increase the current loan fee from 1 percent to 1.25 percent and increase the fee on assumptions of VA-guaranteed loans from 0.5 to 0.75 percent. The current 1-percent fee for vendee loans would remain unchanged. The Committee bill also would authorize the Secretary to raise all fees uniformly to no more than 20 percent above the statutory-fee levels if the new HLGF faced imminent insolvency, and decrease them to no lower than the statutory levels if HLGF finances later improve.

The Committee bill includes downpayment incentives, in the form of fee reductions, aimed at decreasing default rates on VA-guaranteed home loans. The Committee bill would decrease the fee to 0.75 percent for veterans making a downpayment of 5 percent or more (10 percent or more for manufactured-home loans) and to 0.25 percent for downpayments of 10 percent or more on loans for conventional homes.

In his testimony before the Committee's June 22 hearing, Deputy Secretary Principi pointed out that "loans where substantial downpayments have been paid are generally regarded as less risky." It is generally recognized in the housing industry that borrowers with more equity in a property have lower default rates than those with less equity—both because those with greater investments in their homes have more to lose and because the equity sometimes can be used to obtain credit to finance payments when the borrower encounters difficulty in keeping up mortgage payments. If a defaulted loan proceeds to foreclosure, the equity helps offset any reduction in property value and the costs of foreclosure.

S. 1158 as introduced did not treat fee reductions for downpayments on manufactured homes differently from fee reductions for other kinds of housing. This similar treatment overlooked the current requirement in section 1812(c)(5) of title 38 that VA-guaranteed loans for manufactured homes not exceed 95 percent of the purchase price. Since the purpose of the fee reductions is to encourage downpayments that are not required by law, the Committee bill adds a provision to require a purchaser of a manufactured home to make a downpayment of at least 10 percent of the purchase price to be eligible for a reduction of the fee to 0.75 percent.

S. 1158 as introduced would have raised the assumption fee to two-thirds of a percent. The Committee bill would increase this slightly more, to 0.75 percent. This higher fee would help further to ensure the long-term solvency of the HLGF. Like original veteran-borrowers, assumptors would generally receive indemnification under section 403 of the Committee bill in return for the increased fee.

Section 402 also would require Government contributions to the HLGF equal to the loan fees VA otherwise would have collected from fee-exempt borrowers—veterans with compensable service-connected disabilities, spouses of prisoners of war and servicemembers missing in action, and surviving spouses of veterans who die from service-connected disabilities. This Government contribution recognizes that these loans entail revolving-fund costs in the same manner as loans made to non-exempt borrowers because some risk of default exists in all cases. To ensure long-term solvency of the HLGF, the Committee believes these costs should be funded even when the borrower is exempt from paying the fee.

The Committee bill, unlike S. 1158 as introduced, would delay these Government contributions by one year for loans made during FY 1990, just as the bill does for the three 0.25-percent Government contributions required by section 401 for all guaranteed loans. This provision would allow the FY 1990 budget-authority cost of the Committee bill to be kept within the level allocated to the Committee for FY 1990 under section 301(a) of the Congressional Budget Act of 1974. The one-year delay would have no effect on outlays in FY 1990 or later years.

Section 402 of the Committee bill would further provide the Secretary with the authority to make limited, uniform increases in the loan fees to levels no more than 20 percent above the statutory levels. In addition to the limitation on the amount of any increases, the Committee bill contains several other safeguards on the exercise of this authority. First, the Secretary would be authorized to exercise the authority only after determining that, without a fee increase, the HLGF would become insolvent within 24 months after the effective date of the proposed fee increase. Second, the Secretary would have to justify and explain this determination in a report to the Committees on Veterans' Affairs and provide a copy of the report to the Congressional Budget Office. Third, the CBO Director, in turn, would be required to comment to the Committees on the Secretary's report. Fourth, in order to give the Congress the opportunity to consider legislation modifying or nullifying the increase before it takes effect, the Secretary would have to file the report no later than the day on which the President submits to the Congress the budget for the fiscal year in which the proposed increase would take effect. (Under section 1105 of title 31, the President's annual budget is due on January 15.) Finally, in order to prevent singling out any particular types of borrowers for fee increases or for disproportionate increases, the Committee bill would require uniformity in fee increases.

Concomitantly, the Committee bill would provide the authority, not proposed in S. 1158 as introduced, for the Secretary to decrease fees uniformly if the fiscal crisis that formed the basis of the fee increase recedes. The Committee intends that the Secretary use this authority to decrease fees to the statutory rate as soon as economic conditions permit, in order to ensure that fees do not remain unrealistically inflated when the HLGF is once again solvent.

Cost: (See the discussion of section 401(a), above.) According to CBO, the provision requiring Government contributions equal to the fees VA otherwise would collect from exempted borrowers would increase the Government's contribution to the HLGF by $10–15 million a year; the provision granting fee reductions for 5- and 10-percent downpayments would reduce receipts by $34 million in FY 1990; and increasing the assumption fee to 0.75 percent would increase collections by $5 million in FY 1990 (increasing to $40 million by FY 2000).

Indemnification of Veteran After Default

Section 403 of the Committee bill, which is derived from section 2(c) of S. 1158, would amend section 1803 of title 38 to provide that veterans and assumptors who pay the revised fees under the new program (or are exempted from paying them) have no liability to VA in the event of foreclosure on a VA-guaranteed loan, except in cases of fraud, misrepresentation, or bad faith or, alternatively, under regulations prescribed by the Secretary, when the default is for reasons within the borrower's control.

Background

VA-guaranteed loans have helped millions of veterans purchase homes. Many would have been unable to purchase these homes without a VA guaranty. Yet veterans who default on a VA-guaranteed home loan face the dual hardships of losing their homes and being pursued by VA to recover VA's costs of paying the guaranty. The threat of this liability can linger for months or years and can delay and complicate a veteran's recovery from the financial catastrophe that already claimed his or her home. Other statutory loan-protection programs, such as the Federal Housing Administration loan insurance program under the National Housing Act, 12 U.S.C. 1701, et seq., provide insurance against default. Thus, the concept of paying a small fee to gain indemnification has precedent in other Federal programs.

Moreover, VA currently collects less than 6 percent of the liabilities owed by defaulting borrowers. During FY 1988, defaulting borrowers established a total of $693 million in new debt to VA, while VA collected only $38.7 million—a collection rate [1] of 5.6 percent. Between FY 1985 and FY 1987, VA's collection rate fluctuated beween 5 and 6 percent. This low collection rate demonstrates that indemnification would have little effect on the financial soundness of the home loan program, compared to the resulting benefit to veterans who have experienced financial hardship and to their families. Information provided to the Committee by VA in connection with the June 22, 1989, hearing on S. 1158 indicated that approximately 55 percent of all the money VA collected from defaulting debtors was collected through offset of VA benefits. Deputy Secretary of Veterans Affairs Anthony J. Principi, in testimony at the June 22 hearing, agreed that this meant VA's collection efforts hit hardest against VA pensioners, service-connected-disabled veterans receiving compensation, and surviving spouses receiving DIC. He said this disparity is "a troubling issue."

The time and resources VA spends collecting these liabilities would more productively be redirected to counseling efforts to help veterans avoid losing their homes. In this regard, the Committee notes that section 406 of the Committee bill should more than offset the loss of receipts from what historically has been a very low rate of collections.

Committee bill

The Committee bill would provide that any veteran, surviving spouse, or assumptor who pays (or is exempted under the Committee bill from paying) a VA loan fee after September 30, 1989, for a loan guaranteed by VA or assumed after that date generally would have no liability to VA for loss resulting from default on the loan. In order to protect against abuse of indemnification the Committee bill would impose liability to VA in cases of fraud, misrepresentation, or bad faith by the borrower or assumptor in obtaining a loan or an approval of an assumption or in connection with a default. The Committee bill also would impose liability in the case of a default resulting from circumstances within the individual's control.

As introduced in S. 1158, this provision would have provided, as an alternative standard for denying indemnification, that borrowers would not be indemnified when the default resulted from "circumstances not beyond the individual's control." The Disabled American Veterans and the Veterans of Foreign Wars each expressed concern in their written testimony for the July 22, 1989, hearing on S. 1158 that this phrase was vague and invited an overly broad application of the exception to deny indemnification to veterans. The Committee agrees with these concerns and has made two changes to the provision to prevent misapplication of this exception.

First, the Committee bill would tighten the phraseology by eliminating the negative construction, which would seem to have placed a burden on the individual to show that the circumstances were not within his or her control. The change to "circumstances within the individual's control" is intended to place on VA the burden of demonstrating that the individual could have taken steps to avoid the default and the burden to make an affirmative finding about the existence of such circumstances, rather than merely to find that the individual had failed to show that the default reasonably could not have been avoided. Thus, instead of implying that the veteran has to prove a negative, the Committee bill now more accurately places on VA the obligation before denying indemnification of proving affirmatively that the circumstances of the default were "within the individual's control."

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[1] The collection rate is only an approximation because the collections in a particular year primarily are for debts established in prior years. Comparing these collections to newly established debt does not produce a true "collection rate." Over a period of several years, however, these comparisons accurately approximate the true collection rate.

VA's data indicate that, for the past several years, this approximation of the true collection rate consistently is less than 6 percent.

Second, the Committee bill also would modify the provision to require the Secretary to prescribe implementing regulations prior to using the provision to deny indemnification. The Committee believes this requirement would minimize further the chance of misinterpretation or misapplication of this authority to deny indemnification and would permit veterans and their representatives and other interested parties to participate in the development of the regulations through the public notice-and-comment process.

Cost: (See discussion of section 401(a), above.)

Sale of Vendee Loans

Section 404 of the Committee bill, which is substantively identical to section 3 of S. 1158, would amend section 1833(a)(3) of title 38 to (1) extend for one year, through FY 1990, the current expiring authority for VA to sell vendee loans either with or without recourse; and (2) require that all amounts received from recourse and nonrecourse loan asset sales be credited as offsetting collections of the Loan Guaranty Revolving Fund or the Home Loan Guaranty Fund, depending on which fund received the fee for the loan involved.

Background

Recourse and nonrecourse loan-asset sales: When VA sells homes it has acquired as a result of foreclosure on a VA-guaranteed loan, VA itself often finances the sale by extending credit, referred to as a "vendee" loan, to the purchaser. Vendee loans carry favorable interest rates and terms and thereby help VA to market its acquired properties. These vendee loans, as a form of commercial paper, are themselves marketable assets.

In 1983, the Administration accelerated the sale of many different types of Government assets in order to reduce the Federal budget deficit. This effort has reduced significantly the assets of VA's Direct Loan Revolving Fund (DLRF), which had served as an important source of funds to make up deficits in the LGRF through interfund transfers, and the assets of the LGRF itself.

VA has sold vendee loans either with or without recourse. The purchaser of a loan sold with recourse may rely on VA to replace any loans that go into default with "good" loans of equal value. The purchaser, in other words, has "recourse" against VA for losses the purchaser otherwise would incur as a result of defaults in the loans it has purchased.

If VA sells a loan without recourse, VA has no responsibility to "make good" on the loan if the borrower later defaults. In theory, VA severs all legal connections with a loan when VA sells the loan without recourse. The purchaser must bear the entire costs of default. (But, as discussed below, sales without recourse can be "structured" to leave VA bearing a risk of defaults that is similar to the risk VA bears in a recourse sale.)

The sale price of a loan sold with recourse ordinarily should be greater than the price of the same loan sold without recourse, because a loan sold with recourse is, in effect, guaranteed by VA against default. In a perfect market, the long-term return on recourse and nonrecourse sales should be the same, except for the additional costs in a nonrecourse sale (compared to a recourse sale) for the consultants and intermediaries necessary to set up and conduct the sale.

VA's first attempt, in 1987, to sell loan assets without recourse failed when VA had to withdraw an offering because bids ranged from only 15 to 65 percent of the loans' par value. In spite of this failure, the Administration adopted a policy to require, beginning in FY 1988, that VA sell its vendee loan assets only without recourse. The Administration ordered VA to sell a total of $900 million of loan assets during FYs 1988, 1989, and 1990.

In reaction to these events, the House of Representatives added to the legislation enacted on October 16, 1987 as Public Law 100-136 a prohibition (codified in section 1833(a)(3) of title 38) against nonrecourse sales unless the proceeds would be at least equal to the unpaid balance of the loans—thus effectively precluding such sales. The House insisted on this provision in return for its agreement to extend temporarily the VA loan fee that expired on September 30, 1987. Since then, the loan fee has provided a total of about $245 million for the LGRF through July 1989.

The Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), which extended the fee, also included a deficit-reduction provision to delay the nonrecourse-sale prohibition until October 1, 1989. That measure also required during this period that VA decisions whether to sell vendee loans with or without recourse be based on the "best interest of the effective functioning of the loan guaranty program * * *, taking into consideration the comparative cost-effectiveness of each type of sale." This law (also codified in section 1833(a)(3) of title 38) required VA to make detailed cost-effectiveness comparisons before making such decisions and to submit to the Committees on Veterans' Affairs detailed reports for each sale.

VA has provided Congress with five reports of loan-asset sales since Public Law 100-203 took effect. The first sale subject to the reporting requirement occurred February 9, 1988. On April 15, 1988, VA reported that this recourse sale of loans with a principal balance of $212.1 million produced $210.5 million in net proceeds to VA. The second report, submitted September 21, 1988, described a June 29, 1988, structured, nonrecourse sale of 8,903 loans with a principal balance of approximately $308.9 million. VA reported that its net proceeds for the sale were approximately $179 million. On December 14, 1989, VA reported its third sale of 6,177 loans with a principal balance of approximately $234.3 million. This sale, held on September 23, 1988, also was a structured, nonrecourse sale and resulted in net proceeds to VA of approximately $128.8 million. On June 21, 1989, VA reported on the fourth sale, which was another structured, nonrecourse sale, conducted February 23, 1989. VA sold 7,693 loans with a prinicpal balance of approximately $278.1 million that yielded net proceeds of approximately $165.5 million. The fifth sale, conducted on March 23, 1989, involved 12,039 loans with a principal balance of approximately $58.1 million and resulted in net proceeds to VA of approximately $49.7 million. The assets were older loans with a very low expected default rate, which allowed VA to sell them in a nonrecourse sale that, unlike all other nonrecourse VA sales, did not require VA to retain all the risks of default through a structured sale. The latest sale, conducted August 24, 1989, included 9,552 loans with a principle balance of $365 million. This structured, nonrecourse sale produced $233.6 million in net proceeds to VA. The Committee has not yet received VA's report on this sale.

As noted above, current law effectively will prohibit nonrecourse loan asset sales beginning October 1, 1989. Legislation the Committee on Veterans' Affairs submitted to the Senate Budget Committee on July 24, 1989, to comply with the reconciliation instructions to the Committee on Veterans' Affairs contained in the FY 1990 budget resolution (H. Con. Res. 106), would postpone the prohibition on nonrecourse sales for one more year, until October 1, 1990.

Budget scorekeeping for loan asset sale proceeds: In 1987, the Office of Management and Budget, and later the Congressional Budget Office, adopted a new approach to scoring recourse-sale proceeds. Instead of counting the proceeds of recourse sales as receipts, as they previously had done, they declared that a recourse sale would be considered to be equivalent of a loan from the purchaser to the government. Thus, OMB and CBO now refuse to count recourse-sale proceeds as budgetary receipts. As a consequence, a nonrecourse sale—even a structured sale that leaves VA with the financial risk of future defaults—currently has favorable budget scorekeeping results that are absent from recourse sales. The Committee does not agree that this scorekeeping result is reasonable or equitable or that it fairly reflects the economic realities attendant upon the two types of sales.

Committee bill

Section 404 the Committee bill would amend section 1833(a)(3) of title 38 to extend for one year, to October 1, 1990, the current expiring authority for VA to sell vendee loans either with or without recourse and the requirement for VA to justify and explain each sale of vendee loans in a report to the Committees on Veterans' Affairs. Section 404 also would require that all amounts received from either recourse or nonrecourse loan asset sales be credited as offsetting collections of the Loan Guaranty Revolving Fund or the Home Loan Guaranty Fund, depending on which fund received the fee for the loan involved.

Recourse and nonrecourse loan asset sales: The Committee remains extremely concerned that VA manage its vendee loan assets to provide the greatest long-term returns to the home loan program. The steady income from these assets previously provided a financial cushion during periods when the LGRF experienced cashflow problems. The reduction in that income, and the cushion it provided to the LGRF, caused by sales of these loan assets has exacerbated the recent operating deficits of the LGRF.

The Committee is also concerned with nonrecourse sales that are structured so that VA retains almost all the financial risk of nonpayment of the loans through the "subordinate certificates" that VA receives as part of its proceeds form such structured, nonrecourse sales.

The risk retained by VA in a structured, nonrecourse sale is difficult to distinguish financially from the risk VA retains in a recourse sale. Deputy Secretary of Veterans Affairs Anthony J. Principi stated at the Committee's June 22, 1989 hearing that "there is little difference between the two." At the same hearing, CBO budget analyst Kathleen Shepherd indicated that the major difference between recourse sales and structured, nonrecourse sales is that the latter involves many more consultants, advisers, and other intermediaries—all of whom make a profit from the structured sale. Recourse sales, by contrast, involve little guesswork in determining the value of the loans because the loans effectively are guaranteed by the full faith and credit of the Government; the selling price is directly related to the face value and interest rates of the loans.

In theory, the total value VA realizes from the combination of immediate cash from a nonrecourse sale and the long-term income from the retained subordinate certificates should be the same as VA's net return from the immediate cash proceeds of a recourse sale minus the costs of future defaults on the loans sold, except for the additional costs of the consultants and intermediaries necessary to set up and conduct a structured nonrecourse sale. Rather than permanently banning nonrecourse sales, the Committee would prefer to allow VA the flexibility to sell vendee loans, if it must sell them at all, in the manner that is most advantageous to the home loan program. Although the Committee remains skeptical, the Committee would not want to prevent VA from choosing a nonrecourse sale over a recourse sale if the additional costs of the nonrecourse sale were more than offset by savings or additional gains, compared to a recourse sale of the assets.

Section 404 of the Committee bill would permit both recourse and nonrecourse sales for one more year beyond the current cutoff date. The provision would retain the restrictions and reporting requirements in section 1833(a)(3)(A) and (B), enacted in December 1987, currently imposed on all loan asset sales. The delayed prohibition in the current law, which section 404 would extend for another year, would provide VA with an opportunity to demonstrate that its loan-asset-management strategy will save the best long-term interests of the loan guaranty program. The Committee intends to continue to scrutinize each loan asset sale.

Budget scorekeeping for loan asset sales: Section 404 of the Committee bill would restore the pre-1987 scorekeeping methodology for loan asset sales for budget purposes by requiring that the proceeds of all sales of loan assets, whether with or without recourse, be counted as offsetting collections of the fund for which the particular loan's fee was collected.

The current scorekeeping convention creates an artificial bias in favor of nonrecourse sales by treating the proceeds of those sales as receipts—which are fully and immediately counted as deficit-reducing income to the Government—and by refusing to consider the proceeds of recourse sales as receipts. In these times of intense scrutiny of the deficit impact of policy choices, despite the absence of any practical difference in the government's role as risk-bearer in either a sale with recourse or a structured sale without recourse, the scorekeeping rules clearly have the effect of forcing VA to sell these assets without recourse.

The more objective approach in the Committee bill would remove the artificial bias in current scorekeeping rules. The Committee bill would treat the proceeds of both recourse and nonrecourse sales in the same manner, rather than continuing an OMB/CBO policy that dictates public policy based on technical factors rather than on the best interets of veterans and the solvency of the home loan guaranty program.

Cost: According to CBO, the enactment of section 404 would save $496 million in both budget authority and outlays in FY 1990. The Committee notes that the resulting savings are the artificial result of the advantage that the current scorekeeping convention gives to sales without recourse.

Computation of Entitlement Amount

Section 405 of the Committee bill would amend section 1803(a) of title 38 to (1) allow a veteran to acquire up to $5,000 in additional loan guaranty entitlement for a particular loan by paying a 0.1-percent fee for each additional $1,000 of entitlement; and (2) preclude the purchase of any additional entitlement that would cause the total guaranty and any downpayment to exceed 25 percent of the purchase price except where the Secretary, under regulations prescribed by the Secretary, waives this limitation as a means of enabling veterans to use their entitlements in certain circumstances.

Background

The VA home loan guaranty is designed primarily to substitute for the downpayment lenders otherwise would require when a veteran purchases a home. Current lending practices generally allow a veteran to purchase a home without a downpayment for up to four times the amount of the maximum VA guaranty. The guaranty maximum of $36,000 thus allows a veteran to buy a house worth up to $144,000 with no downpayment. In many parts of the country, however, this amount cannot buy even a modest-sized home for a veteran and his or her family.

Before the latest increase in the maximum guaranty, which Congress enacted in Public Law 100-198 (1987), the maximum was $27,500. The $27,500 guaranty took effect on October 1, 1980. During the period between the latest two increases (October 1980 to August 1987), the median purchase price of an existing home rose from $62,700 to $85,000—a 35.6-percent increase, according to the National Association of Realtors. The median price of a new home rose even more, from $64,600 to $101,600, during the same period—a 57.5-percent increase, according to the National Association of

Home Builders. The VA guaranty maximum thus rose only 31 percent during a period in which existing-home prices rose 35.6 percent and new-home prices rose 57.5 percent. Since then, according to the National Association of Realtors, in 1988 the median price of an existing home rose even higher to $89,300 as did the median price of a new home, which rose to $112,500.

Housing prices in many parts of the country prevent many veterans from buying a home without a downpayment. For example, according to data compiled by the National Association of Realtors, the median sales price of an existing single-family home during the third quarter of 1988 was $160,800 in the Hartford, Connecticut area; $183,800 in Boston; $192,100 in the New York-New Jersey area; $190,900 in Los Angeles; $213,700 in San Francisco; $226,000 in Honolulu; and $226,200 in Orange County, California. Thus, home loan guaranty purchasers in these areas must make significant downpayments, usually 25 percent of the amount that the purchase price exceeds $144,000, in order to acquire a medium-priced home.

Committee bill

Section 405 of the Committee bill would allow a veteran to acquire additional loan guaranty entitlement—up to $5,000—for a particular loan by paying a 0.1-percent fee for each additional $1,000 of entitlement, or portion thereof. The veteran would generally be permitted to acquire increased entitlement to the extent that it would cause the total of the guaranty and any downpayment to exceed 25 percent of the purchase price. The provision would allow the Secretary to prescribe regulations allowing VA to waive this 25-percent limitation in markets where lenders otherwise would charge so many points (which sellers must pay under the VA program) that it is unlikely the veteran could use his or her VA entitlement to acquire a home. The Committee bill also would allow veterans to finance the fee for the additional entitlement, like other loan fees, as part of the loan.

This provision is intended to help make the loan guaranty program better reflect current home prices in many parts of the country with unusually high real estate prices.

Allowing a veteran to purchase an additional $5,000 in loan guaranty would increase to $164,000 the maximum value of a VA-guaranteed home loan that a veteran could purchase without a downpayment. The provision in S. 1158 as introduced would have allowed veterans to purchase up to $10,000 in additional entitlement. The Committee bill cuts that amount in half in order to gain experience with implementing this innovative proposal.

The fee for the optional additional entitlement—0.1 percent of the loan amount for each $1,000 of entitlement purchased—is designed at least to offset any additional liabilities VA would face as a result of the larger guaranties. At the Committee's June 22 hearing, Deputy Secretary Principi was requested to provide an evaluation of the provision in S. 1158 as introduced allowing the purchase of up to $10,000 in additional entitlement, with a simple $10,000 increase in the maximum guaranty. In an August 3 letter, he submitted a comparison concluding that in a "normal" economic environment, the regular 1-percent funding fee "would produce sufficient income to offset losses from foreclosure on * * * loans" affected by the straight increase. In the case of loans for which extra entitlement was purchased with the additional fee of 0.1 percent per extra $1,000 of guaranty, VA noted that "[i]n general the smaller the loan amount the higher the likelihood of foreclosure" and concluded that costs due to defaults on such higher guaranties would be more than completely offset, except during periods in which the default rate exceeded 8 percent, which is more than double the expected rate for the loans involved.

Deputy Secretary Principi's letter (with enclosure) follows:

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, DC, August 3, 1989.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: During the Senate Veterans' Affairs Committee hearing held June 22, 1989, the proposal contained in S. 1158, the "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989", providing veterans the option to purchase additional loan guaranty entitlement was discussed. I was asked to submit, for the record, a comparison of the bill proposal with a straight increase in entitlement. The comparison is enclosed.

If I can provide further information please let me know.

Sincerely yours,

ANTHONY J. PRINCIPI,
Deputy Secretary.

Enclosure.

COMPARISON OF $10,000 ENTITLEMENT INCREASE FOR ALL VETERANS VS. PURCHASE OF ADDITIONAL ENTITLEMENT

Currently first time home buying veterans have up to $36,000 in entitlement available which enables them to obtain a home loan of up to $144,000 from lenders utilizing GNMA secondary mortgage market financing. With the exception of certain real estate markets, e.g., parts of California, New England and the New York City area, the $36,000 entitlement is sufficient to allow veterans to purchase an adequate home with no downpayment. The provisions of S. 1158 to allow veterans to purchase additional entitlement is directed at veterans living in high cost areas where $144,000 loans provide very limited opportunities to obtain mortgage financing without substantial downpayments.

It should be noted at the outset that a very high percentage of foreclosures occur at the lower loan amounts. During the 1980's approximately 94 percent of all foreclosures were from loan amounts less than $90,000. This group represents about 84 percent of the originations. In general the smaller the loan amount the higher the likelihood of foreclosure. This bill would only impact on no money down loans above $90,000 because the current

$36,000 entitlement provides the maximum 40 percent guaranty at this amount.

A $10,000 dollar entitlement increase above the current $36,000 maximum would mainly assist first time veteran homebuyers obtaining loans in excess of $144,000 who have insufficient cash assets for a downpayment. Qualified veterans could obtain a no downpayment loan up to $184,000 assuming GNMA made the appropriate adjustment in their downpayment/guaranty requirement ($46,000×4=$184,000).

Under a general entitlement increase of $10,000 to all veterans VA's guaranty liability would rise on all loan amounts above $90,000, e.g., on a $100,000 loan to a first time home buyer the guaranty is $36,000 or 36 percent. With a $46,000 maximum entitlement VA's guaranty would be $40,000 or 40 percent. VA's contingent liability would increase and in certain cases VA would pay the lender the full guaranty amount (no bid) in excess of the current $36,000 maximum. In the event of serious economic difficulty characterized by heavy foreclosures and a sharp decline in property values, e.g., Texas, additional liability by VA on those higher loan amounts could result in significant losses to the Government.

However, in a more stable "normal" environment we would expect a very low foreclosure rate on the group of loans above $90,000. Most likely the foreclosure rate would be less than 3 percent in any origination year. At this foreclosure level the current one percent funding fee would produce sufficient income to offset losses from foreclosures on these loans.

Example

> One hundred veterans obtain no downpayment loans for $184,000. Each loan is guaranteed by VA for $46,000. The veterans each paid a one percent funding fee or $1,840.
>
> Funding Fee=$184,000 (100×$1,840).
>
> Three loans go to foreclosure and VA suffers its maximum loss on each loan $46,000.
>
> Total Loss=$138,000.

At the 3 percent foreclosure level VA would not incur an overall loss. A 4 percent foreclosure rate produces the break even point, i.e., 4×$46,000=$184,000.

However, it is unlikely VA would suffer the maximum loss in each case. Therefore, the foreclosure rate would have to exceed 4 percent on this group of loans before VA would experience a loss.

In this same example, had veterans paid an additional one percent fee for the extra $10,000 entitlement, the foreclosure rate would have to exceed 8 percent before VA would experience a net loss.

SUMMARY

Under stable economic conditions the additional $10,000 entitlement provided to all veterans, or purchased as an option, would not increase cost to the government. However, under the straight increase of entitlement the government becomes more vulnerable to loss in the event of severe economic downturn because loan amounts between $90,000 and $144,000 would carry higher government guaranty. This higher guaranty is not necessary to induce lenders to provide financing.

The additional fee income from purchased entitlement would provide a source of revenue to offset losses from foreclosures on lower loan amounts.

The provision prohibiting the veteran or surviving spouse from purchasing additional entitlement beyond the point at which the guaranty plus any downpayment would equal 25 percent of the purchase price is designed to prevent veterans from being forced to acquire increased guaranty amounts beyond the levels reasonably necessary to protect the lender. However, the Secretary would have the authority to prescribe regulations allowing an exception to the 25-percent limitation when the additional entitlement would enable veterans and their surviving spouses to use their entitlements to acquire homes in certain areas in which lenders charge so many points for VA-guaranteed loans that sellers—who must pay the points under the VA program—generally are unwilling to sell to VA-guaranteed loan borrowers.

Cost: CBO stated that it is unable to estimate the cost or savings that would result from this provision because it has no basis for estimating the extent to which veterans would take advantage of this option.

Notifications of Refusal of Tenders of Partial Payments

Section 406(a) of the Committee bill, which is derived from section 5(a) of S. 1158, would amend section 1832(a) of title 38 to authorize the Secretary (1) to require that lenders notify VA whenever they refuse a borrower's tender of a "significant portion" of the debt due on a VA-guaranteed or direct VA loan that is in default, and (2) to require that the notice include additional information about the tender of partial payment.

Background

Section 1832(a) of title 38 currently requires lenders to notify VA when a veteran defaults on a VA-guaranteed loan. Upon receiving notice of the default, VA is required to counsel the defaulting veteran about alternatives to foreclosure and the effects of foreclosure on the liabilities of VA and the veteran, except when VA determines that the lender has a demonstrated record of providing the same information in a timely and accurate manner. The Secretary is required, to the extent appropriations are available, to ensure that sufficient personnel are available to carry out this requirement.

Within 30 days after receiving notice of default, the Secretary may pay the lender the unpaid balance of the loan plus accrued interest and receive assignment of the loan and the mortgage deed.

The number of defaults has remained fairly constant over the past few years. In FY 1986, 182,372 borrowers defaulted on VA-guaranteed loans; in FY 1987 there were 182,058 defaults; in FY 1988 there were 176,503; and from October 1, 1988, through May 31, 1989, 117,300 borrowers have defaulted.

Drastic understaffing in VA regional offices has meant that VA counseling too often is unavailable, according to GAO testimony before the Senate and House Committees on Veterans' Affairs on June 17, 1987, and March 17, 1988, respectively. As recently as March 31, 1989, the VA Inspector General reported that Loan Servicing and Claims Sections in VA regional offices often lacked the staff necessary to meet the loan-default workload and that VA failed to establish priorities, goals, or objectives to improve service and termination of defaulted VA-guaranteed home loans. VA Office of Inspector General, *Audit of Servicing and Terminating Defaulted VA Guaranteed Home Loans*, Rep. No. 9R8–B10–049, at 6 (March 31, 1989). The Inspector General found that the average VA loan service representative had caseloads of up to 496 loans in September 1987. Based on a sample of VA and lender loan servicing activities in 1987, the Inspector General estimated that VA's failure to provide adequate servicing and termination of defaulted loans and to ensure lender compliance with the requirements to notify VA of defaults would result in $84.8 million in avoidable losses to VA during FY 1989. *Id.* at 23.

The Committee deeply regrets VA's inability to ensure that all defaulting veterans receive the adequate and timely information that would allow them maximum opportunity to cure their defaults or otherwise avoid foreclosure.

Veterans who tender significant partial payments may be in the best position to cure their default and, thus, to benefit from VA counseling efforts to avoid foreclosure. These veterans' cases also might prove appropriate for VA to exercise its authority to pay off and receive assignment of the loan. Current law, however, provides no mechanism for early identification of these veterans.

Committee bill

Under section 406(a) of the Committee bill, the Secretary would be able to require lenders to notify VA whenever the lender refuses a tender of a payment on a "significant portion" of a defaulted loan and to require that the notice include a statement of the circumstances of the default, the amount tendered, the amount of the indebtedness at the time of the tender, and the reasons for the refusal.

The notification requirement for lenders who refuse tender of partial payment would expand the current notification procedures, but would not burden lenders greatly. The information should, however, according to VA testimony endorsing the provision at the June 22, 1989, hearing, provide a means by which overburdened VA counselors can better target their efforts to reduce foreclosures.

S. 1158 as introduced would have made mandatory the lender's notification to VA of the lender's refusal of a tender of partial payment and did not include the requirement that such notice include the additional information. The modifications in section 406(a) as reported would allow the Secretary the flexibility to implement the notification requirement in the most useful and administratively efficient and effective manner.

Cost: According to CBO, the enactment of section 406(a) would entail no significant costs.

Procedure on Default: Computation of Net Value

Section 406(b) of the Committee bill, which is substantively identical to section 5 of S. 1158, would amend section 1832(c)(1)(C) of title 38 to (1) extend by two years, through FY 1991, the statutory formula (known as the "no-bid" formula) by which VA determines whether it will either acquire a property upon foreclosure of a VA-guaranteed loan or simply pay the guaranty and refuse to submit a bid at the liquidation sale, and (2) prohibit VA from considering the cost of borrowing funds in determining the net value of a property for purposes of the no-bid formula, except to the extent of one-half of the amount by which the cost of borrowing the funds necessary to acquire the property exceeds the cost of borrowing the funds necessary to pay the guaranty.

Background

Under section 1832(c) of title 38, VA is required to compare the net cost of acquiring a property at foreclosure and of reselling it with the cost of simply paying the guaranty amount. In making this comparison, VA is required to determine the net value of the property under section 1832(c)(1)(C), which is

> the amount equal to (i) the fair market value of the property, minus (ii) the total of the amounts which the Administrator estimates the Administrator would incur (if the Administrator were to acquire and dispose of the property) for property taxes, assessments, liens, property maintenance, property improvement, administration, resale, and other costs resulting from the acquisition and dispostion of the property.

If the net value of the property is not greater than the amount of the indebtedness minus the guaranty, section 1832(a)(8) requires VA to pay the guaranty and not acquire the property, an alternative known as a "no-bid." If net value exceeds the amount of the indebtedness minus the guaranty, section 1832(a)(5)-(7) generally requires VA to pay the holder of the loan the amount of the indebtedness to acquire the property.

The provisions of section 1832(c)(1)(C), which identifies the acquisition and resale costs VA must consider, does not expressly authorize VA to include in the calculation the Government's cost of borrowing the funds necessary to acquire the property.

However, the Joint Explanatory Statement accompanying the Conference Report on the Deficit Reduction Act of 1984 (DEFRA), section 2512(a)(2) of which enacted the "no-bid" formula, stated that the conferees did not intend to change VA's then-current policy of not considering the cost of funds in the no-bid formula (H. Rept. No. 98-369, page 1377).

> In connection with the VA's calculation of the costs of acquiring and disposing of properties, the conferees do not intend to change the VA's current policy of not considering interest costs that the United States would incur if it were necessary for the Government to borrow the funds for a particular acquisition. If the Administrator determines that a change to this policy is warranted, notwithstanding the conferee's position as stated above, the Administrator shall, not later than the February 1 preceding the fiscal year in which a proposed change would take effect, provide the Veterans' Affairs Committees with notice of the change.

On January 30, 1989, then-Acting Administrator of Veterans' Affairs Thomas E. Harvey notified the Committees of VA's intent to propose regulations to consider the cost of funds in the no-bid formula and specifically stated in that notification that, in compliance with the language in the Joint Explanatory Statement on DEFRA, VA would not implement the proposed regulations until on or after October 1, 1989. VA published these proposed regulations on March 31, 1989, stating that final regulations would take effect on October 1, 1989 (54 Fed. Reg. 13320). On April 5, 1989, VA published a "correction" of the March 31 notice, which VA said "erroneously" had stated that the regulation would take effect October 1, 1989 (54 Fed. Reg. 13703). The April 5 "correction" stated that the regulation would take effect August 1, 1989, and on May 16, 1989, Secretary Edward J. Derwinski notified Chairman Cranston that VA intended to implement those proposed regulations on August 1, 1989.

On July 19, 1989, VA published final regulations (54 Fed. Reg. 30207), effective August 21, 1989, that would have factored into the no-bid formula the Government's cost of funds, as measured by interest (at a rate based on the yield on certain Treasury Department obligations with a maturity comparable to the average holding time for VA-acquired properties) on the total amount necessary to acquire the property.

On June 28, 1989, the Mortgage Bankers Association of America filed suit against VA to block the cost-of-funds regulations. On August 18, 1989, Judge George H. Revercomb of the United States District Court for the District of Columbia granted a preliminary injunction preventing VA "from enforcing the new regulation until the case can be decided fully." *Mortgage Bankers Association of America* v. *Derwinski,* No. 89-1841 (D.D.C., Aug. 18, 1989). The Court acted after the Committee voted to order S. 1158 (as modified) favorably reported as part of S. 13.

Committee bill

Section 406(b) of the Committee bill would extend VA's no-bid formula by two years, until October 1, 1991, and would prohibit VA from considering the cost of borrowing funds in determining the net value of a property for purposes of the no-bid formula, except to the extent of one-half of the amount by which the cost of borrowing the funds necessary to acquire the property exceeds the cost of borrowing the funds necessary to pay the guaranty.

VA contends that including the cost of funds in the no-bid formula will more accurately reflect VA's actual costs. But the regulation as proposed is flawed as a matter of logic, regardless of whether the underlying concept represents sound policy.

The statutory no-bid formula is designed to compare two possible courses of action—acquiring the home foreclosure or simply paying the lender the amount of the guaranty—and to direct VA to follow the more economically advantageous course. The proposed regulation, however, would have established an unbalanced comparison by taking into account the cost of borrowing funds to acquire a home, while completely ignoring the cost of borrowing funds necessary to follow the other possible course—paying the guaranty.

The Committee bill would correct this error by requiring VA to subtract the guaranty amount from the total amount necessary to buy the home at foreclosure—the "total indebtedness"—before adding any cost-of-funds factor to the cost of acquiring the home. At the Committee's June 22, 1989, hearing, CBO budget analyst Kathleen Shepherd agreed that VA's failure to account for the cost of funds to pay the guaranty was a fundamental flaw in VA's regulation. She agreed that the formula in S. 1158 (incorporated verbatim in section 406(b) of the Committee bill) would correct this error in VA's regulation.

The Committee bill would cut the cost-of-funds factor further by allowing VA to consider only half the imputed interest on the difference between the acquisition amount and the guaranty. This 50-percent reduction would help avoid a drastic change in the number of situations in which VA decides not to bid on a foreclosed property. CBO estimated that no-bids would increase by 40 percent—from 25 percent of foreclosures to 35 percent—if the VA proposal took effect. The Committee bill formula also recognizes that there are sources of funds available to the LGRF in addition to those borrowed by the Government and that borrowed appropriated funds constitute only a portion of VA expenditures to acquire foreclosed properties.

The Committee bill also would lock in the imputed interest rate as the same rates specified in VA's proposed (now temporarily enjoined) regulation.

Even the Administration itself has not spoken with one voice on this issue. Secretary of Housing and Urban Development (HUD) Jack Kemp and HUD's Government National Mortgage Association (GNMA) both have raised strong objections to VA's regulation. In a May 5, 1989, letter to the Secretary of Veterans Affairs, Louis C. Gasper, Executive Vice President, GNMA, stated that Ginnie Mae opposed the VA regulation because of the dramatic increase it would cause in VA no-bids, which it considers "the number one threat to the viability of the concept of a Government-guaranteed, mortgage-backed security program." One June 23, 1989, Secretary Kemp wrote to Secretary Derwinski "to express my concern over [the proposed cost-of-funds regulation] * * * that could have a serious detrimental effect on the GNMA mortgage-backed security (MBS) program. * * * We [also] fear that the proposed policy could result in further lender refusal to participate in [the VA-guaranteed home loan program] * * * because the 'no-bid' costs outweigh servicing income."

The Committee notes that such a reduction in lender participation in the program could reduce veterans' access to VA-guaranteed loans.

Chairman Cranston wrote to the Secretary of Veterans Affairs on July 20, 1989, urging the Secretary to delay the cost-of-funds regulation until he addressed the concerns of Secretary Kemp and GNMA. On August 10, 1989, Secretary Derwinski provided Chairman Cranston with a copy of Secretary Derwinski's response to Secretary Kemp rejecting HUD's contentions.

Although GNMA and VA strongly disagree on the VA regulations, both agreed in testimony before the Committee that the formula in S. 1158 (now section 406(b) of the Committee bill) was a "reasonable compromise" on the cost-of-funds issue.

Cost: According to CBO, the enactment of section 406(b) would result in estimated savings of $34 million in budget authority and $151 million in outlays in FY 1990 and produce total savings of $138 million in outlays in FYs 1990–1994. The Committee notes that those savings are measured against the no-bid calculation assumed for purposes of the CBO baseline underlying the Congressional Budget Resolution for FY 1990 (H. Con. Res. 106), which did not anticipate including any costs of funds in the no-bids formula. CBO estimates that the Administration's version of the cost-of-funds factor (temporarily now enjoined) would produce savings of $117 million in outlays in FY 1990 and total savings of $427 million in outlays in FYs 1990–1994.

Refinancing Loans

Section 407 of the Committee bill, which is substantively identical to section 2 of S. 898, would amend section 1810 of title 38 to permit a veteran to obtain a VA-guaranteed refinancing loan for more than 90 percent of the property's value for one of three purposes: to refinance a construction loan, to replace an installment land sales contract with a traditional deed and mortgage loan, and to refinance a conventional or FHA loan with a lower-rate VA-guaranteed loan. Section 407 would limit the amounts of these refinancing loans to the lesser of the appraised value or the sum of the balance on the existing loan plus any closing costs the veteran pays for refinancing.

Background

Until recently, a veteran could use a VA-guaranteed loan to refinance a non-VA-guaranteed home loan for up to the full reasonable value of the home. On December 21, 1987, Congress enacted in Public Law 100–198 a provision to protect taxpayers' interests by limiting refinancing loans to 90 percent of the appraised value of the property. The basic goal of the VA-guaranteed loan program is to help veterans to purchase a home, but those who refinance with a VA-guaranteed loan already own a home. In drafting the provision later enacted as section 7 of Public Law 100–198, the Committee struck a balance between allowing veterans the latitude to cash out equity in their homes and burdening taxpayers with the increased risk of default associated with low- or no-equity loans.

There are, however, some types of potentially full-value refinancing loans permitted under current law that do not enable the veteran to cash out any equity he or she may have in the home. These loans primarily serve to replace less favorable financing with a more-favorable VA-guaranteed loan. For example, under section 1810(a)(8) or (9)(B)(i) or section 1812(a)(1)(F) of title 38, a veteran may use a potentially full-value VA-guaranteed loan to pay off a VA-guaranteed loan that has a substantially higher rate of interest.

Under section 1810(a)(9)(B)(ii) or 1812(a)(1)(G), a veteran may use a full-value VA-guaranteed loan for the combined purposes of paying off a manufactured-housing purchase-money loan and to purchase a lot on which the house is permanently affixed.

Committee bill

Section 407 of the Committee bill would relax the 90-percent limitation for refinancing loans that are obtained for one of the three limited purposes: refinancing a construction loan, replacing an installment land sales contract with a traditional deed and mortgage loan, and refinancing a conventional or FHA loan with a lower-rate VA-guaranteed loan. The Committee bill would limit these types of refinanced loans to the lesser of the appraised value or the sum of the balance on the existing loan plus any closing costs the veteran pays for refinancing.

The first situation in which the Committee bill would relax the 90-percent restriction concerns veterans who obtain temporary construction loans to build a home on land already owned by the veteran. When construction is complete, the veteran could replace the initial financing with a 30-year, permanent VA-guaranteed loan.

The second situation involves veterans who purchase property under an installment land sales contract and then seek to replace the land sales contract with a more traditional mortgage-deed form of security and ownership.

The third situation concerns veterans who assume a non-VA loan when they purchase a home and then seek to replace that loan with a lower-interest VA-guaranteed loan.

All three of these types of refinancing arrangements primarily serve to replace a current loan with a better loan. In this respect, they are similar to the full-value refinancing loans that, under current law, may be used to replace higher-interest-rate loans. The Committee believes that relaxing the 90-percent limitation for these narrowly drawn situations would benefit veterans without unduly increasing the risk or impact of defaults.

Cost. According to CBO, the enactment of section 407 would entail no significant costs.

Waiver of Indebtedness

Section 408 of the Committee bill, which is derived from section 8 of the Administration-requested S. 898, would amend section 3102 of title 38 to (1) limit the time during which a veteran may apply for waiver of a home-loan debt to the one-year period following the date on which VA notified the debtor of the indebtedness, and (2) require that debt notices for home-loan and non-home-loan debts inform the recipient of his or her right to apply for a waiver and of how to apply for a waiver.

Section 3102 of title 38 currently imposes no time limit for a veteran to apply for waiver of a home-loan debt to VA. Veterans seeking waivers for other types of VA debts, such as debts arising from benefits overpayments, must apply for a waiver within 180 days after receiving notice of the debt.

Home-loan-debt waiver applications can cause problems when filed after VA has initiated litigation efforts to collect the debt because, in such circumstances, VA suspends all collection efforts until it has ruled on the waiver application. If the waiver application is denied, VA must then re-initiate referral of the debt for collection.

The Committee bill would allow VA to proceed with collection efforts uninterrupted by waiver requests made more than a year after the debtor was notified of the home-loan debt to VA. The provision as proposed in the Administration-requested bill, section 8 of S. 898, would have limited to 180 days the period allowed for application for a waiver of a home-loan debt. The Committee was concerned that this amount of time might be insufficient for veterans or survivors who have lost their homes to apply for waiver of the associated debt to VA and thus is proposing a one-year period during which such waiver applications could be filed.

The Committee notes that section 403 of the Committee bill gradually would make debt waivers largely obsolete by generally indemnifying borrowers against liability to VA for guaranty payments VA makes on loans closed or assumed after October 1, 1989.

The Committee bill also would require that VA include in all notices of a debt to VA a statement informing borrowers of their right to apply for a waiver of the debt and of the procedures for application. The Committee believes that notification of one's rights should be a prerequisite to imposing a time limit for exercising the right. The Committee bill thus imposes this requirement on VA notices of all types of debts to VA, home-loan as well as non-home-loan debts.

Cost: According to CBO, the enactment of section 408 would entail no significant costs.

Clarifying Correction Regarding Entitlement

Section 409 of the Committee bill, which is substantially identical to section 9 of the Administration-requested S. 898, would amend section 1802 of title 38 to clarify an oversight in existing law that seems inadvertently to have omitted servicemembers on active duty from the definition of "veteran" for purposes of the VA-guaranteed home loan program.

Section 1802(a)(2)(C)(ii) of title 38 is designed specifically to grant eligibility for VA-guaranteed home loans to servicemembers on active duty. That section does so, however, by referring to "veterans" who have served on active duty for more than 180 days and continue on active duty without a break in service. Since section 101 of title 38 defines a "veteran" as a person who served on active duty "and who was discharged or released therefrom under conditions other than dishonorable", these provisions form a paradox because active-duty servicemembers generally have never been "discharged or released" from duty and, thus, technically, are not "veterans."

The Congress never intended that active-duty servicemembers be excluded from VA home-loan eligibility. Section 409 of the Committee bill thus would clarify the inadvertent drafting paradox.

Cost: According to CBO, the enactment of section 409 would entail no significant costs.

TITLE V—MEMORIAL AFFAIRS

Reimbursement for Cost of Cemetery Headstone or Marker

Section 501 of the Committee bill, which is derived from the Administration-requested S. 1147, would amend section 906(d) of title 38 to permit payment of the headstone or marker allowance to the estate of a deceased veteran who purchased a headstone prior to death.

Under current law, the Secretary may reimburse the person entitled to request the headstone or marker for the actual costs incurred by or on behalf of such person in acquiring a non-Government headstone or marker for placement in any cemetery other than a national cemetery in connection with the burial or memorialization of a deceased individual who is eligible for burial in a national cemetery. The amount of reimbursement may not be in excess of the average actual cost that VA pays for headstones and markers, which is currently approximately $80. Section 501 of the Committee bill would allow for reimbursement to the estate of the deceased veteran in a case where the veteran had purchased a headstone or marker prior to death.

The Committee sees no basis for denying reimbursement to the estate of a deceased veteran where the veteran was farsighted enough to have arranged and paid for a headstone.

Cost: CBO estimates that enactment of section 501 would entail no significant costs.

Cremated Remains in Arlington National Cemetery

Section 502 of the Committee bill, which is substantively identical to S. 1141, would direct the Secretary of the Army, who oversees Arlington National Cemetery, to set aside an appropriate area in Arlington National Cemetery not suitable for the burial of casketed remains for the unmarked interment of the cremated remains of persons eligible for interment in that cemetery.

Presently, Arlington National Cemetery provides for the cremated remains of eligible individuals to be inurned in a collumbarium. Casketed remains are interred In the ground. Cremated remains are not interred. It is anticipated that all in-ground plots will be exhausted by the year 2020 and that the collumbarium for cremated remains will be exhausted by 2029.

The Committee notes that a bill similar to S. 1141 that has been introduced in the House by Congressman Bennett of Florida was developed in consultation with the Department of the Army, which supports the proposal. The Committee understands that the Army has already chosen the site for this purpose and intends to erect a memorial wall on which the names of those whose remains are buried will be engraved. In the written testimony that was submitted on S. 1141, service organizations expressed a desire that such a memorial wall be included in the legislation. However, in view of the Army's existing plan to erect such a memorial wall, the Committee does not believe it is necessary to include in the legislation a requirement that such a wall be constructed.

Cost: CBO estimates that enactment of section 502 would entail no significant costs.

New Arizona National Cemetery

Section 503 of the Committee bill would (1) authorize VA, in connection with the administration of the National Memorial Cemetery of Arizona, to employ without regard to civil service laws certain persons who had been employed by the State of Arizona in such a capacity when the cemetery was transferred to VA pursuant to section 346 of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322) and (2) require the Secretary to submit to the Congressional Committees on Veterans' Affairs an operating budget plan for each of the three fiscal years 1989, 1990, and 1991.

Background

The State of Arizona's Veterans Service Commission obtained the land for a cemetery in 1976, and the cemetery was then developed by the State with a VA grant pursuant to the 50/50 matching funds program in section 1008 of title 38, United States Code. The cemetery opened in May 1979 as the Arizona Veterans Memorial Cemetery and was operated by the State until 1989. The State adopted VA's eligibility criteria for interment when the cemetery opened.

On May 22, 1988, section 346 of Public Law 100-322 was enacted to provide for the transfer of the cemetery into the National Cemetery System. The transfer was effective on April 1, 1989, and the cemetery was then re-named "The National Memorial Cemetery of Arizona." It now operates as the 113th cemetery in the National Cemetery System.

When the transfer became effective, certain State of Arizona employees who had provided exceptional service to the facility when it was run by the State were nevertheless found to be ineligible for Federal employment because they were not Federal civil service employees and apparently did not score highly on the regular civil service standardized measures despite their specialized experience and expertise.

Committee bill

Section 503 of the Committee bill would authorize VA to employ certain persons who had worked at the cemetery prior to its transfer into the National Cemetery System. Specifically, under this bill, VA could employ such persons without regard to civil service requirements if they meet criteria and qualifications established by the Secretary.

In addition, section 503 would require the Secretary to outline in an operating budget plan the anticipated sources of funds for the operation of the cemetery for each of fiscal years 1989, 1990, and 1991, and, to submit such plan each year to the Committees on Veterans' Affairs of the Senate and the House of Representatives. The plan for fiscal year 1989 would be due within 30 days after the enactment of this bill, the FY 1990 plan would be due by October 1, 1989, and the FY 1991 plan would be due by February 1, 1990. Under the provisions of section 346 of Public Law 100-322, the Secretary is prohibited, for fiscal years 1989, 1990, and 1991, from obligating funds for the operation of the new national cemetery in excess of the greater of (a) the amount the Secretary estimates VA would have been required to pay under section 903(b)(1) of title 38—relating to payments to States in connection with the VA $150 burial payment for each eligible veteran in a State cemetery—had the cemetery not been transferred, or (b) the amount that VA paid to the cemetery in fiscal year 1987, which was $129,000, under that authority.

The Committee believes the operating budget plan should help ensure that VA has a strategy for coping with the special funding constraints that will exist under section 346 through fiscal year 1991 and that service at this national cemetery in a manner that befits a U.S. national cemetery is not interrupted by those constraints.

Cost: CBO estimates that enactment of section 503 would entail no significant costs.

TITLE VI—MINORITY AFFAIRS

Assignment of Minority Issues to an Assistant Secretary of Veterans Affairs

Section 601 of the Committee bill, which is derived from S. 564, would improve coordination and monitoring of VA efforts to provide services and benefits to minority veterans.

Background

Minority veterans may often have unique problems and needs which arise as a result of race, gender, history, geography, culture, or other circumstance. These problems and needs are often unaddressed by VA.

Native-American veterans: According to the President's Commission on Indian Reservation Economics report of November, 1984, Native Americans in general live shorter and less affluent lives than other groups. VA's Advisory Committee on Native-American Veterans reports that Native Americans significantly underutilize VA benefits and health care services. Although that Committee had to base this contention in part on anecdotal data due to the paucity of formal statistical studies on Indian veterans, the evidence is clear that, at least in the case of health care, underutilization is a significant problem. For example, although Indians comprise about 0.6 percent of the total veterans population (about 160,000 men and women), fiscal year 1985 data indicate that only 0.4 percent of VA hospital discharges and 0.3 percent of hospitalized patients were Native American. This may be attributable to several factors, including economic conditions, culture, lack of interagency coordination, and the geographic locations of their residences, which are often in remote, rural areas.

According to VA's Advisory Committee on Native-American Veterans, forty to fifty percent of all Native-American and Alaska Native veterans reside on reservations, which means that they comprise a large portion of the 2.9 percent of veterans who live more than 100 miles from VA medical centers. This distance from VA facilities means that Indian and Alaska Native veterans, who are already economically disadvantaged, must have access to private automobiles or other vehicles in order to reach such facilities as well as have the financial wherewithal for overnight accommodations.

Native-American cultures frequently differ from the dominant culture in terms of language, understanding, and expectations; attitudes toward illness and disease, such as a belief in traditional healing, may shape a veteran's decision to seek and accept care offered by the VA. VA's Advisory Committee on Native-American Veterans, in its February, 1988, report, stated that the lack of interagency coordination among the several federal, state, and tribal agencies with jurisdiction over Native-American affairs results in both the inefficient utilization of resources by Native-American veterans and confusion about the availability of benefits and services.

Hispanic veterans: The situation faced by Native American veterans is mirrored in other minority groups. Hispanic veterans, for example, have played an important role in every one of our Nation's conflicts since the American Revolution. According to the American GI Forum, a Hispanic veterans organization, Hispanic veterans have been consistently overrepresented as a percentage of wartime casualties, and hold more Congressional Medal of Honor winners per capita than any other ethnic group represented in the veteran population. As in the case of most minorities, it is not possible to say with any degree of certainty to what extent Hispanic veterans participate in VA programs, although the American GI Forum maintains that they do not fully utilize the benefits to which they are entitled. The American GI Forum suggests the curtailment of beneficiary travel allowances, for example, has had a disparate effect on lower income groups, particularly those who live in rural areas, as many Hispanic veterans do. GI Forum also believes the relatively high unemployment rate for Hispanic veterans is exacerbated by state veterans' employment representatives who may lack the sensitivity to Hispanic culture or Spanish language skill that is necessary to meet the needs of Hispanic veterans.

Black veterans: Black veterans and their families account for almost one-third of the black population in the United States and black veterans represent almost eight percent of the total veterans population. According to the National Urban League's "The State of Black America 1988," blacks are statistically overrepresented in the military, comprising 21 percent of enlisted ranks and 6.6 percent of officers. As a race, blacks have served their country with honor, valor, and distinction. However, once discharged, they have not always received the benefits accorded other veterans. The Department of Labor's Bureau of Labor and Statistics, for example, reports that blacks who served in the Vietnam theater have a higher rate of joblessness than other Vietnam-era veterans. The Department also reports that overall black veteran unemployment is 2½ to 3 times that of white veterans.

Veterans of Asian and Pacific-Island ancestry: According to the 1980 census, these veterans comprise over 212,000 individuals, many of whom compiled very distinguished war records. The nearly all Japanese-American "Go for Broke" division sustained among the highest number of casualties for World War II combat units, and was awarded an extraordinary number of decorations for valor. This enviable record of service reflected, perhaps, a desire by recently-arrived immigrant groups to integrate themselves into the national fabric. This impulse to "prove" themselves was reinforced by strong traditions of duty and honor.

However, these same traditions also shape attitudes toward the seeking of care and benefits offered by federal agencies. At the Committee's July 14, 1988, hearing on PTSD, Dr. Roger Hamada, a Clinical Psychologist affiliated with VA's Stress Disorders Research Program in Honolulu, Hawaii, testified that Asian and Pacific-Islander veterans tend to present themselves for treatment at lower rates than other veterans not because they are healthier than other veterans, but because of a culturally-induced reluctance to impose on the federal government for assistance.

Women veterans: Women veterans were brought into military service for the first time in large numbers in World War II because they were badly needed. Although the women's component of the military was to have been phased out after the war, they remained as part of the peacetime military by virtue of their strong record of service. Their participation continued through the Korean conflict and Vietnam wars, reaching a level of over 10 percent. According to the Office of the Deputy Secretary of Defense for Military Manpower and Personnel Policy, as of March, 1989, there were 224,634 women on active duty in the armed forces—10.7 percent of the active forces—and their relative numbers are projected to increase in the coming years even though the total force is projected to decline.

Women veterans are currently the fastest growing segment of the veterans population; female veterans comprise 4.3 percent of the total veteran population and number almost 1.2 million. Although VA has responded aggressively in many instances to women's needs in the past few years, much remains to be done. VA's Advisory Committee on Women Veterans stated in its 1988 report that women are still less aware than male veterans of the benefits to which they are entitled and that, even when aware, they are less likely to claim them. Another continuing problem reported by the Advisory Committee on Women Veterans is the inability of public employment offices to place women veterans, particularly former enlisted women, in jobs and at wage levels commensurate with their military experience. As noted in the 1984 report of the Advisory Committee on Women Veterans and also cited in "Women Veterans: America's Forgotten Heroines" (Crossroads Press, 1983), statistical data on the use of VA benefits by women veterans remains deficient.

Committee bill

Section 601 would amend section 4 of the Department of Veterans Affairs Act (P.L. 100-527; 102 Stat. 2638) by requiring the Secretary of Veterans Affairs to assign to an Assistant Secretary responsibility for assessing the effects of VA policies and activities on minority veterans, including women veterans, and for coordinating and monitoring policies facilitating the access of such minority veterans to VA benefits and services. The provision would add an eleventh, "minority oversight" function to the list of statutory duties to be assigned among VA's up to six statutory Assistant Secretary positions.

The Committee believes that this provision is necessary to effect significant, overall improvements in services and benefits for minority veterans and to educate VA employees about the special concerns of minority veterans. Although the Committee acknowledges VA efforts to reach out to minority veterans, the Committee believes that such efforts have been desultory and narrowly-focused, and that VA has failed, often unintentionally, to address the many unique needs and problems of minority veterans in an integrated, systematic manner. The Committee believes that institutionalizing concern for minority veterans at the Assistant Secretary level is a necessary first step to ensuring that minority veterans have access to the full range of benefits and services to which they are entitled by law.

At the June 9, 1989, Committee hearing, VA's Advisory Committee on Native American Veterans expressed strong support for S. 564, citing the experience of Native Americans in accessing services and benefits offered by VA. The Advisory Committee noted that "largely due to their small numbers and relative isolation, those Native American veterans most in need have historically not received the services and benefits" of VA, "nor even information of such." The Advisory Committee cited as evidence of VA neglect the fact that Native Americans were left out of the recently completed National Vietnam Veterans Readjustment Study; that VA lacks "accurate and comprehensive statistics data on Native-American veterans", thus limiting "veteran identification, needs assessment, determination of utilization rates, and program planning"; that there is a widely held opinion among Native-American veterans that "the Federal and State agencies are indifferent to their needs", and that many times employees of such agencies "are perceived as having a paternalistic attitude" toward such veterans.

VA opposed the legislation and expressed concern that the legislation as drafted would assign "line" responsibilities to an Assistant Secretary, who normally would only have "staff" responsibilities. The Committee believes it has addressed the Administration's major concern regarding the legislation by amending the provisions to delete reference to responsibility for "the development and implementation" of policies regarding access to benefits and services, and substituting instead responsibility for "coordinating and monitoring" such policies.

Cost: CBO estimates that the enactment of section 601 would entail no significant costs.

Reestablishment of the Advisory Committee on Native-American Veterans

Section 602 of the Committee bill, which is derived from S. 1145, would reauthorize the Advisory Committee on Native-American Veterans for an additional two years.

Background

The Advisory Committee was established in 1986 with a two-year mandate to examine and evaluate programs and other activities of the VA with respect to the needs of Native-American veterans, including American Indians and Alaskan Natives. In 1988, a representative of Native-Hawaiian veterans was added as a member of the Advisory Committee, and the group was reauthorized for an additional year to allow for an examination of the needs of this population of veterans. The activities of the Advisory Committee officially ended on February 1 of this year with the submission to the then Administrator of Veterans' Affairs of the Advisory Committee's third and final report.

In its short existence, while hampered by the absence of much statistical and other data on Native-American veterans, the Advisory Committee issued three reports yielding important information about the needs of Native-American veterans, assessing the VA's efforts to address those needs, and making recommendations to improve VA services and new benefits to a unique class of veterans.

Committee bill

Section 602 would (1) reauthorize through fiscal year 1991 the activities of the Advisory Committee on Native-American Veterans, first established under section 19032 of the Veterans Health Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388), through March 31, 1991; and (2) require the submission of two additional annual reports to the Secretary of Veterans Affairs on February 1 of 1990 and 1991.

The Committee bill is derived from S. 1145, which would have reauthorized the Advisory Committee with a smaller membership. The Committee deems it best that the composition and size of the Advisory Committee be left to the Secretary's discretion within the bounds of the current statutory prescriptions, although the Committee would have no objections if the Secretary wished to reduce the size of the Advisory Committee.

The Committee sees the Advisory Committee's role as five-fold. First, to continue to monitor VA's progress in carrying out the recommendations contained in the Advisory Committee's three previous reports; second, to continue to represent the interest of certain veterans who have a unique, legal, constitutional, and historical relationship with the United States (in this regard, the Committee notes the existence of standing advisory committees for other special veteran populations, including former prisoners-of-war and women); third, to serve as a resource for the Assistant Secretary who is to be assigned the minority-veterans oversight function mandated in section 601 of the Committee bill; fourth, to serve as a source of advice and information in connection with the carrying out of the Native-American home loan study mandated in section

603 of the Committee bill; and, fifth, to assist the National Center on PTSD in its inquiry into outreach to and treatment of veterans of racial and ethnic minority groups, as required in section 203 of the Committee bill.

The Committee notes and welcomes the Secretary's recent announcement of his intention to establish a National Native-American Veterans Coordinating Council, an interagency working group that would coordinate and promote federal programs and services for Native-American veterans. The Committee believes that the Advisory Committee and Coordinating Council will complement each other: a Congressionally-chartered, consumer-oriented Advisory Committee would bring important differences in perspective and purpose to issues that a solely executive branch, provider-oriented Council could not. The Committee also notes that the continuation of the Advisory Committee is considered essential to the effectiveness of the activities called for in sections 601, 603, and 203 of the Committee bill.

Cost: No significant costs are associated with reauthorization of the Advisory Committee.

Study of Home Loans to Native-American Veterans

Section 603 of the Committee bill, which is derived from S. 1146, would require VA to conduct a study to determine whether Native-American, Native-Alaskan, and Pacific-Islander (including Native-Hawaiian) veterans living on trust or communally owned lands experience difficulty in obtaining VA home-loan benefits, and, if so, to propose administrative, regulatory, or legislative changes to address the problem.

Background

Half of all Native-American veterans live on reservations. Reservation lands, which are held in trust by the Federal Government, are considered tribal or community-owned property and are nontransferable. The trust status of reservation lands, in addition to the persistent unemployment that plagues Indian communities, makes it difficult or impossible for many Native-American veterans to qualify for VA home-loan benefits—indeed, the VA Advisory Committee on Native-American Veterans cannot document a single VA-guaranteed loan made to a Native-American veteran living on a reservation. In general, VA guarantees a portion of a veteran's commercially-obtained loan. But lending institutions are unlikely to give a mortgage to a veteran residing on a reservation, because the veteran's employment might be limited sharply and the prospective house has little security value to the lender because it stands on nontransferable trust land. Other Native-American groups suffer similar problems. Veterans in American Samoa, for example, live on lands that are tribally owned under the Matai system and face similar difficulties in obtaining VA home-loan benefits.

Committee bill

The Committee bill would require the Secretary to conduct a study to determine the level of participation in VA home-loan programs of Native-American, Native-Alaskan, and Pacific-Islander (including Native-Hawaiian) veterans living on trust or communally-owned lands and, if such participation is relatively low, to explain the reasons for this and propose possible remedies. In carrying out the study, the Secretary would be required to consider the views of the Advisory Committee on Native-American Veterans and the experience of the Bureau of Indian Affairs and the Department of Housing and Urban Development with respect to housing programs for individuals living on trust or communally-owned lands. The Committee bill would require that the study report be delivered to the Committees on Veterans' Affairs by March 1, 1990.

Section 603 of the Committee bill is derived from S. 1146, which would have authorized a three-year, $5 million pilot program to provide direct home loans to Native-American and other veterans residing on trust or communally-owned lands. S. 1146 was based on the February 1, 1989, report of the Advisory Committee on Native-American Veterans, which recommended a pilot program to determine the feasibility of providing direct home loans to Native-American and other veterans residing on trust lands.

The Committee is interested in exploring the apparent problems of those veterans who are unable to obtain VA-guaranteed home loans. The Committee also believes that more information is required before the Committee can recommend a specific solution, such as a pilot program of direct home loans. The Committee remains flexible about specific, potential solutions, including the initiatives in S. 1146. If the report that would be required under the Committee bill indicates that current VA home loan policies and programs are inadequate or inappropriate for Native-American and other veterans who live on trust lands, the Committee will then reexamine S. 1146 or similar legislation addressing the problems.

Cost: According to CBO, the enactment of section 603 would entail no significant costs.

TITLE VII—MISCELLANEOUS

Security Services

Section 701 of the Committee bill, which is dervied from section 221 of S. 13, would add a new subsection to section 218 of title 38, under which functional and technical supervision of the performance of security-force functions would be delegated to the Office of the Secretary, and would require a report from the Secretary containing his plan for upgrading the training, recruitment, retention, staffing, pay, and protection afforded VA's Security personnel.

Background

The Committee has long been concerned about possible problems associated with VA's security force. On a daily basis, VA security personnel are responsible for protecting about 203,000 employees, 126,000 patients, all visitors, and government property at 172 medical centers valued at about $7 billion.

During fiscal year 1988, approximately 578,000 offenses reportedly occurred at VA medical centers resulting in a loss of about $7.7 million (which includes Federal and personal property loss). The offenses occurring ranged from the most violent—including assaults with a dangerous weapon and rape—to the more mundane issuance of traffic violations. Collectively, the spectrum of VA offenses reported reflected a microcosm of crimes occurring in American society today.

In view of the number of offenses being reported and the dollar loss associated with those offenses, in May 1989, Chairman Cranston initiated an investigation (conducted by a staff member temporarily detailed from the General Accounting Office) of VA security-force problems. This investigation included the transmittal to VA of extensive questions and follow-up questions on June 13 and August 10, 1989, respectively, and in scheduling a Committee hearing on June 22, 1989, as well as investigative visits to various medical centers' security services.

The staff investigation and the hearing have raised concerns whether VA security personnel are adequately prepared for their job of preventing medical facility crimes. The emerging picture of VA security personnel is one of a workforce which is likely underpaid, inadequately trained, understaffed, and improperly armed or protected. The result is that an unusually high number of VA security personnel leave for better positions, only a small percentage of VA medical facility crimes are reportedly solved, and security personnel are needlessly placed at risk in the performance of their duties.

A principal cause of VA security force problems is the lack of strong management oversight of and resources for the security-force program. This lack of oversight and resources exists both at the VA Central Office (VACO) as well as at the individual medical facility level. Both levels of management can and do affect security operations and both must share the responsibility for the inadequacies in VA's security force.

At the VACO level, the Office of Security Service under the Veterans Health Services and Research Administration (VHS&RA) is responsible for security-force matters. With a staff of 2, this office, among other things, develops policy, determines training needs, directs medical facility security program evaluations, and oversees the activities of about 1,800 VA security personnel.

At the VAMC level, facility management is responsible for directing day-to-day security operations.

In its September 30, 1988, report entitled "Audit of Hiring Practices of VA Police Officers", the VA Inspector General's office evaluated hiring problems confronting the security program. The report found that 57 percent of VA police officers surveyed were either unqualified, unsuited, or both, for their current positions, including 21 police officers who did not disclose prior criminal convictions on their applications for VA employment. The report, therefore, included recommendations for improving preemployment screening of police officer applicants, for making a suitability review of all police officers currently on duty, and for designating police officer positions as noncritical-sensitive for background screening purposes.

VA-supplied information indicated that 48 VAMCs, or more than one quarter of the VAMCs nationally, had a turnover rate of 25 percent or more in its security force for fiscal year 1988. VA further indicated that 35 VAMCs has metal detectors in use (8 use walk-through detectors, 30 use portable detectors, and 3 use both). Of that number, 20 VAMCs were in high-crime areas and 15 were not. VA also indicated that, of the 20 VAMCs which have reportedly experienced the highest number of assaults with dangerous weapons, 9 do not report having walk-through or portable metal detectors. A similar haphazard pattern emerged regarding the use of protective vests and nightsticks at medical centers.

Committee bill

The Committee believes that improvements are needed in VA's medical facility security program. The Committee bill would, therefore, relocate VA's Security force organizationally from VHS&RA to the Office of the Secretary. The Committee believes this arrangement, which would not alter the direct line of security force accountability at the medical facility level, would give the Security program a reasonable opportunity to acquire more highly qualified leadership, more resources, more visibility, and more top management attention than it has received in VHS&RA.

Additionally, the Committee bill requires the Secretary, within 120 days of the date of enactment of this measure, to submit a report which contains information on the upgrading needed in the Security program, particularly in the protection afforded security personnel (given that so many medical facilities are located in high crime areas). The Secretary's report is specifically to evaluate several options for greater security-force protection, including (but not limited to) the use of (1) protective vests, (2) nightsticks, (3) new and more effective MACE weapons, (4) stun guns, (5) firearms, and (6) a two-tiered security force under which Security personnel performing their duties on the grounds outside patient-treatment buildings would be armed, for example, with stun guns or firearms, while other security personnel who performed their duties inside patient-care areas—not including those operating metal detectors—would be armed only with MACE.

To the extent that the Secretary's report results in proposed new regulations dealing with law enforcement, the Committee believes those regulations should be referred to the Attorney General. This would enable the Attorney General to perform the consultative function that section 218 of title 38 mandates.

Costs: According to CBO, the enactment of section 701 would entail no significant costs.

Expansion of Multiyear Procurement Authority to Include Nonmedical Items

Section 702 of the Committee bill, which is derived from section 121 of S. 13 as introduced and which is substantively identical to section 705 of H.R. 4741 as passed by the Senate on October 18, 1988, would amend section 114 of title 38 to expand VA's multiyear procurement authority to include the purchase of non-health-care supplies and services.

Present section 114 of title 38, which was enacted in section 404 of Public Law 100-322, on May 20, 1988, authorizes VA to use multiyear contracts for the procurement of supplies and services for use in its health-care facilities. VA expects a 5-to-10 percent decrease in its bid prices for such supplies and contracts and services that are found to warrant a multiyear procurement contract. In addition, this authority is considered likely to enable VA to achieve economies in contract administration, increase quality of service from contractors, and encourage competition in its procurement of medical items. The new law delineates specific conditions for the use of the multiyear authority that are designed to ensure that it is used in the best interests of the Government and to provide appropriate protections for contractors.

According to VA, it is implementing the new multiyear contracting authority for maintenance of building-service equipment at VA healthcare facilities, preventive maintenance of medical equipment, elevators and fire-alarm systems, waste maintenance, and pest control. VA testified that it is aware of no reason to restrict the authority to its health-care facilities.

According to VA's testimony at the Committee's June 9 hearing, the expanded authority could be used for such purposes as supply contracts for headstones and markers and for the purchase of automated data processing equipment and software. As the VA witness testified:

> These contracts often require significant start-up costs, both in terms of capital outlays and personnel resource commitments. Multi-year contracting would allow the contractor to equitably amortize these investments over an extended period of time. The unexpected result would be increased competition and better pricing, without any increase in administrative costs.

The Committee believes that expansion of VA's multiyear procurement authority to include non-health-care supplies and services should improve the cost-effectiveness and efficiency of VA procurement programs and, as a result, of VA services to veterans.

This provision also would make a technical correction to section 114(e) so as to delete an unnecessary and faulty definition of the terms "cancel" and "cancellation".

Cost: According to CBO, the enactment of section 702 would entail no significant costs.

Notice of Procedural Rights and Other Information

Section 703 of the Committee bill, which is identical to Amendment No. 391 to S. 13 which in turn was derived from section 108 of S. 11 as reported by the Committee and passed by the Senate on July 11, 1988, would require VA to provide detailed information, to persons claiming Department of Veterans Affairs benefits, regarding the reasons for claims disallowances and the procedural options available to pursue those claims further.

Background

The provisions of section 703 are, as to the procedural-step-notification requirement, substantively identical to those contained in section 108 of S. 11, as passed by the Senate on July 11, 1988, and were also incorporated in section 513 of S. 2011, as reported by the Committee and passed by the Senate on October 18, 1988. Unfortunately, neither provision was contained in the final version of S. 11 that was signed into law on November 18, 1988, as division A of Public Law 100-687.

On June 22, 1989, the General Accounting Office (GAO) completed a report—entitled "Improvements Needed in Processing Disability Claims" (GAO/HRD-89-24)—on the Department of Veterans Affairs' processing of claims for service-connected disability compensation and non-service-connected disability pension which, among other things, noted serious deficiencies in VA's provision of notices to claimants regarding its decisions. This report, which contains a useful overview of the VA claims-processing system and the problems that currently exist therein, was prepared at the request of Representative Don Edwards, Ranking Majority Member on the House Committee on Veterans' Affairs, and Chairman Cranston, following the joint Senate and House Committees on Veterans' Affairs hearing on March 17, 1987, on allegations, arising out of the *NARS* case 473 U.S. 305 (pending before U.S. District Court for Northern District of California, No. C-88-1861-MPH), of due process violations in VA claims adjudication.

GAO carried out its examination of VA's claims process in five VA regional offices: Baltimore, Maryland; Louisville, Kentucky; St. Petersburg, Florida; San Francisco, California; and Seattle, Washington. The review was conducted from March to November 1988. GAO's audit work consisted of three phases. First, evaluators obtained basic information on regional claims-processing practices and issues, such as staff training, experience, and performance appraisal. Second, they reviewed a random sample of 1,462 claim files to determine whether the alleged improper practices were occurring. Finally, they interviewed regional managers and staff about (1) their determinations, (2) the causes of identified problems, and (3) other issues of concern to the investigators.

GAO's report states "the claims processing problems we found do not indicate that the VA adjudication system violated veterans' due process rights". However, GAO's inquiry into VA's claims-processing system and the practices employed by VA employees within this system did find several significant deficiencies and describes three major groups of problems that were found to exist in VA's processing of claims. The first two of these are addressed in whole or in part by section 705.

First, GAO found that the notices VA provides to veterans when communicating its decisions on claims were unclear and not informative. GAO also found that occasionally there was no documentation that such notices were sent and that information about how a veteran could appeal a decision was not included in the notices in 2 to 3 percent of claims and that prior to implementation of a February 1987 policy change by VA significant numbers of veterans were found not to have been informed that their claims had been closed due to a failure to comply with procedural requirements.

Moreover, in approximately 28 percent (158) of the 564 pension notices and over 60 percent (539) of the 898 compensation notices reviewed, insufficient information was found to have been provided on the reason or reasons for VA's decision. GAO found that "Denial notices for compensation claims were especially poor. They often stated only that the claims were denied because service connection was not found."

Second, VA's development of the evidence necessary to evaluate claims fully and properly was found by GAO to be incomplete in approximately 10 percent of the claims cases reviewed. The most common flaw in this area was the failure by VA to obtain all available evidence, such as medical records. Other deficiencies were the gathering of unnecessary evidence, unreasonable slowness in initiating the development of evidence, and the closing of claims before allowing the claimant sufficient time to provide requested evidence. Veterans' representatives were frequently not provided courtesy copies of letters from VA to their clients regarding the development of evidence.

VA response to these findings noted that the Department had "already recognized the need for better correspondence to VA claimants * * *" and had programmed its computers to provide for limited word-processing capability so that adjudicators preparing notices of proposed reduction or termination of benefits would have more flexibility and not have to rely solely on pre-programmed "form letter" language as had been the case. In addition, VA stated that it had issued to field stations an automated letter-writing package that is designed to ensure nationwide consistency in notices that are sent to claimants and that notice is given to service organization representatives. VA also stated that it is developing a system of reviewing field station-developed compensation and pension pattern letters, central office-issued form letters, and computer-generated form letters; and noted that several steps had been taken to improve the training of supervisors and to improve the supervision of involved employees at all stages of the claims-adjudicated process. These are all useful and necessary steps if taken expeditiously, uniformly, and comprehensively.

The third major problem that GAO found was VA's slowness in registering compensation and pension claims in its computer system once they were filed. VA was found to take an average of 9 days to enter these claims into the computer system. For 6 percent of these types of claims, VA took over 30 days to register them. VA stated in its response that it had taken steps to increase the speed with which cases are registered, and the Committee is not proposing a statutory approach to this problem at this time.

Committee bill

Section 705 would require VA, at each stage of its claims-adjudication proceedings in a case in which it has not fully awarded the claim, to provide the claimant and the claimant's representative, if any, clearly-written notice of the rationale for the decision and a detailed description of the subsequent procedural alternatives through which the claim might be pursued. Specifically, the Committee bill is intended to remedy the problems found by GAO by attempting to ensure that veterans and other claimants are clearly informed regarding VA actions on their claims as follows: VA would be required, in any case where there has been a decision to provide the claimant (and the claimant's representative, if any) with a written notice of the procedural rights of claimant and the rationale for the decision, including a summary of the evidence, or lack of evidence, supporting the decision. Also, VA would generally be required to provide notices written in easily understandable language and include in those notices information on all remaining available procedural stages and options and any other information that the Secretary determines would be useful to assist the claimant in obtaining full consideration of the claim.

In the Committee's view, the shortcomings found by GAO in VA's processing of disability claims may seriously impede the furnishing of benefits to eligible veterans. Denial notices that lack meaningful information on the rationale of the decisions and available procedural options are fundamentally unfair. In an administrative system in which claimants are not represented by veterans' service organizations in 59.5 percent of the cases at the Regional Office level and in 24.5 percent of the cases at the Board of Veterans' Appeals level and in which representation by attorneys is discouraged and infrequent, claimants have a need to be apprised fully and clearly of their procedural rights and the reasons for the negative decisions regarding benefits to which they may be entitled. Lacking such information, claimants for VA benefits very likely are impaired in making well-informed choices on whether to accept or appeal a VA decision.

As noted above, last year the Senate passed section 108 of S. 11, which was nearly identical as to the procedural-steps notification requirements in section 705. The concern at that time was the same that exists now—that veterans claiming VA benefits were not adequately informed of their procedural rights and options in pursuing their claims. Unfortunately, the House Veterans Affairs' Committee would not accept section 108 and the provision was not included in the final version that was enacted.

However, in the joint statement on S. 11 which Chairman Montgomery and Chairman Cranston both inserted in the Record during final consideration of that legislation, it was noted that section 108 was not included because the Committees did "not believe it is necessary to codify the requirements of notice in the Senate bill because the Committees believe that these requirements are a fundamental part of due process rights." (Congressional Record, October 18, 1988, S16645; October 19, 1988, H10347.) The Committee believes that GAO's findings now demonstrates that such notice requirements should be established by statute in order to ensure that veterans are able to exercise all of their rights to pursue their claims for benefits, and it is for that reason that this legislation was reintroduced.

Cost: CBO estimates that enactment of section 705 would entail no significant costs.

Use of Internal Revenue Service and Social Security Administration Data for Income Verification

Section 704 of the Committee bill is substantively identical to the two bills reported by the Committee last year—S. 2611 reported by the Committee as an original bill on July 6, 1988, as well as to an identical provision in S. 2011, reported by the Committee on August 1, 1988 and passed by the Senate on October 18, 1988, as H.R. 4741—as well as to an original bill ordered reported by the

Committee on July 27 of this year. Senator Murkowski introduced a similar bill, S. 1188, this Congress on June 14, 1989.

The Committee bill would amend paragraph (7) of section 6103(l) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)), relating to disclosures of certain third-party and self-employment tax information (from the Commissioner of Social Security or the Secretary of the Treasury) to Federal, State, and local agencies administering certain programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program for purposes of income verification, so as to require disclosure to VA of (a) all such information for purposes of determining eligibility for VA needs-based pension programs under chapter 15 of title 38 or any other law administered by VA, needs-based parents' dependency and indemnity compensation provided under section 415 of title 38, and VA health-care services based on income status under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of title 38, and (b) only wage and self-employment information from such returns for purposes of determining eligibility for compensation paid, pursuant to section 4.16 of title 38, Code of Federal Regulations, at the total-disability-rating level based on an individual determination of unemployability.

Section 703 would allow VA, in the case of compensation beneficiaries with total-disability ratings based on individual unemployability, to verify or otherwise act upon wage or self-employment data only if the Secretary finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.

The Committee bill also would amend chapter 53 of title 38, relating to special provisions pertaining to VA benefit programs, to add a new section 3117 to prohibit the Secretary from using such tax information without first complying with the requirements of section 1137 of the Social Security Act (42 U.S.C. section 1320b-7) relating to independent verification of such data, notification to the individual concerned, and allowing the individual fair opportunity to contest Department findings based on such information.

In addition, VA would be required, within 90 days after the date of enactment and before obtaining such return information, that VA notify benefit recipients and applicants that income reported to VA will be subject to verification against such return information and to so notify all new applicants and periodically to renotify all recipients.

Section 703 provides that (a) VA's costs of establishing and operating the program under which the return information would be obtained, used, and verified would be paid for out of VA's compensation and pension account, and (b) amounts collected as a result of the program would be paid into that account.

Background

VA administers several "needs-based" veterans benefits, principally non-service-connected disability pension (paid to certain wartime veterans who have attained age 65 or who have permanent and total disabilities incurred subsequent to their military service); non-service-connected survivors' pension (paid to the spouses and children of certain war-time veterans who die from causes unrelated to their service); and parents' dependency and indemnity compensation (DIC) (paid to the parents of individuals who die of any cause while on active duty or, if subsequent to service, a a result of a disease or disability which arose while the veteran was on active duty). Eligibility for these "needs-based" benefits and the monthly rates payable depend upon the total income of the beneficiary and his or her immediate family.

In addition, certain veterans with disabilities incurred while on active duty receive service-connected disability compensation at the 100-percent rate (currently $1,468 per month for a veteran with no dependents) even though their disabilities are not severe enough to qualify for a 100-percent disability rating. Such compensation is paid when VA determines that the service-connected disability or disabilities render the veteran unemployable. (The rating awarded in such a case is referred to as an "individual-unemployability" rating.)

The eligibility criteria for VA hospital, nursing home, or outpatient care include certain income criteria, and the eligibility criteria for domiciliary care include a VA determination of income or lack of adequate means of support.

In each case, eligibility determinations are made by VA on the basis of income data which has been self-reported by the beneficiary. The only program for matching federally-collected data against VA self-reported beneficiary data to verify the latter is with respect to Social Security payments. VA's Inspector General has conducted one-time matches of beneficiary-reported data against other data bases. These one-time matches revealed material discrepancies between data reported by some beneficiaries and data compiled from other sources—for example, wage data provided by Federal and State employers and unemployment taxes paid by private employers based on wages earned.

In order to establish the extent and financial impact of such discrepancies, Senator Murkoswki, on September 10, 1985, requested that the GAO conduct a review of the accuracy of self-reported beneficiary income using certain income tax data bases maintained by the Internal Revenue Servcie (IRS) and Social Security Administration (SSA). Because this review required access to tax-related data, the concurrence of the Joint Committee on Taxation to allow the GAO to act as the Joint Committee's agent was required and obtained. The GAO's review was based on the same data now used to verify income data provided by applicants for and recipients of other needs-based programs such as Supplemental Security Income.

For these benefits, access to certain third-party—such as wage data provided by employers on W-2 forms and interest data provided by financial institutions on 1099 forms—and self-employment tax data (but not any individual income-tax return information) is authorized by section 6103(l)(7) of the Internal Revenue Code (26 U.S.C. 6103(l)(7)). Section 6103(l)(7) does not, however, authorize similar access to VA for verifying the eligibility of recipients of needs-based veterans' benefits.

The GAO reviewed the records of 1.4 million 1984 VA pension recipients and found that nearly half—698,000—reported self-employment income or had income reported for them by third-party sources, to the IRS and the SSA. Of these, 549,000 had a total of $947 million more income on tax records than was recorded on VA records. GAO's findings indicated that if only discrepancies greater than $100 are considered, the potential 1984 overpayments totalled $182.5 million paid to nearly 149,000 VA beneficiaries. The GAO further found that only $25.3 million of these overpayments could have been identified by VA using existing resources and procedures. Access to the same third-party and self-employment tax data available to other agencies for purposes of eligibility determinations would have permitted identification of over $157.2 million in erroneous payments not otherwise identifiable, according to the GAO. The GAO recommended that the Congress allow VA access to such information to permit verification of self-reported beneficiary income. In its comments on the GAO report, VA shared the GAO's concerns regarding income verification, noting that the "VA needs the ability to verify wages, interest, and dividends."

As noted above, the Committee bill is similar to S. 1188 and substantively identical to an original bill reported by the Committee last year—S. 2611—and to a provision in S. 2011 reported by the Committee and passed by the Senate as H.R. 4741. By considering and reporting this legislation again this year as both a separate bill and as this provision in the Committee bill, the Committee underscores the importance of this legislation and the subsequent cost-savings it affords to VA's already overburdened budget.

Committee bill

The Committee bill would, effective on the date of enactment, amend paragraph (7) of section 6103(l) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)) relating to disclosures, for purposes of income verification, of certain third-party and self-employment tax information from the Commissioner of Social Security or the Secretary of the Treasury to Federal, State, and local agencies administering certain programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program, to require generally the disclosure of such information to VA for purposes of income verification in connection with its needs-based pension programs under chapter 15 of title 38 or other laws administered by VA (primarily section 306 of Public Law 95-588); parents' DIC under section 415 of title 38; compensation based on individual unemployability ratings under section 4.16 of title 38, Code of Federal Regulations; and health-care services furnished on the basis of income, incapacitation, or resources under sections 610(a)(1)(I) and (2)(A) (hospital care), 610(b) (domiciliary care), and 612(a)(2)(B) (outpatient care) of title 38.

The bill would also amend chapter 53 of title 38, relating to special provisions in connection with VA benefit programs, by adding a new section 3117, which would prohibit the Secretary from using such tax information without first complying with the requirements of section 1137(c) of the Social Security Act (42 U.S.C. 1320b-7(c)) relating to independent verification of such data, notification to the individual concerned, and allowing the individual fair opportunity to contest Department findings based on such information.

In determining whether a veteran qualifies for individual unemployability compensation, only the veteran's ability to earn a living is relevant, and unearned income, such as dividend payments, has no bearing on this determination. Accordingly, in the cases of disclosures for purposes of verifying entitlement to compensation based on an individual-unemployability rating, the Committee bill would limit VA's authorization to obtain return information to earned income, i.e., wage and self-employment information.

In addition, to avoid causing needless concern to compensation beneficiaries who, although unable to obtain or maintain a substantially gainful occupation, have some earnings, the Committee bill would allow VA to verify independently or otherwise act upon wage or self-employment data for compensation beneficiaries with individual-unemployability ratings only if the Secretary finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating based on unemployability. The Committee expects VA to evaluate data obtained as a result of the enactment of this legislation using the same standard now used to evaluate self-reported employment information. The Committee emphasizes that, by authorizing VA to verify veterans' self-reported earnings in individual-unemployability cases, it is not suggesting that any changes should be made in VA's eligibility criteria for these benefits, that such criteria are inappropriate, or that this program is experiencing a problem with inaccurate reporting by veterans.

During its consideration of this legislation, the Committee reviewed the provisions of S. 1188. As introduced, that bill contained a provision (subsection (c)) which would have conditioned health-care eligibility on VA providing notice of its intention to verify the veteran's Income. The Committee bill does not include this precondition to providing health care because it could create a situation requiring VA to deny care to veterans if it had not fulfilled its own notification obligation.

Subsection (c) of S. 1188 as introduced also contained provisions explicitly making liable for copayments, under section 610(f) of title 38, veterans who obtain hospital, nursing home, or domiciliary care based on self-reporting of incomes qualifying for eligibility without making copayments if it is subsequently determined that they had higher incomes which made them eligible only upon their making copayments. The Committee notes that that result is provided for under current law with respect to both inpatient care under section 610 and outpatient treatment under section 612.

The Committee is greatly concerned that the costs of administering this cost-saving program not be taken from VA's already-overburdened VA General operating Expenses account, which provides funding primarily for the Veterans Benefits Administration operational expenses, and the Medical Care account and Medical Administration and Miscellaneous Operating Expenses account, which provide funding primarily for the VA health-care facilities and for the Central Office operations of the Veterans Health Services and Research Administration, respectively. Accordingly, the Committee bill would generally provide in new section 3117 that the VA's costs of establishing and operating the program under which the return information would be obtained, used, and verified, would be paid for out of VA's compensation and pension account, and that all the savings under such program would accrue to such account. By providing that collections achieved as a result of the matching of data would be credited to the compensation and pension account, an on-going augmentation of the account from which the administrative expenses could be drawn would be provided.

The Committee bill would, in a free-standing provision, require that VA notify benefits recipients and applicants that the income data they provide to VA for the purpose of establishing initial or continuing eligibility for benefits would be subject to verification by means of matching against information in reports submitted by employers, financial institutions, and other third parties to the Internal Revenue Service and the Social Security Administration. The bill would require that VA provide this notice within 90 days after the date of enactment and prior to initiating verification and matching of data. Notification to beneficiaries would provide a deterrent to individuals who might otherwise be negligent about reporting their income or consider underreporting their income and thus, the Committee believes, should result in substantial savings even prior to VA's implementation of verification procedures.

Subsequently, VA would be required to provide notice of the income-verification program to all new applicants for the benefits involved or for health-care services based on income status and periodically to renotify all recipients. In this regard, the Committee urges VA to take steps toward ensuring that benefits recipients receive clear and understandable instructions and explanations regarding the income questions and the subsequent verification process.

The Committee emphasizes that this provision of the Committee bill would neither eliminate nor reduce the entitlement of any VA beneficiary. It would merely provide VA with a tool, previously provided to other Government agencies, to ensure that certain needs-based or earned-income-tested benefits and services are provided in accordance with statutory requirements. In addition to identifying potential overpayments, the Committee expects that VA will use the data which this provision would make available to determine if increased payments are in order in those cases where the data indicate a beneficiary overreported his or her income.

The Committee wishes to further emphasize the requirement in the Committee bill that VA provide beneficiaries with notice of any proposed reductions in payments, the basis for the proposed reduction, and an opportunity for the beneficiary to respond to VA's proposed action, as required by section 1137(c)(2) of the Social Security Act (42 U.S.C. 1320b–7(c)(2)). The Committee also emphasizes the requirement in section 6103(l)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(C)) that the agency—in this case VA—receiving return information protect the confidentiality of that information.

The Committee expects VA to consult with other agencies now using third-party and self-employment return data for eligibility verification in order to gain the benefit of their experience in establishing the procedures and mechanics of a succesful data-matching program.

Cost: According to CBO, the enactment of section 703 would entail no significant cost or savings in FY 1990 and total estimated savings of $639 million in both budget authority and outlays through FY 1994.

Court of Veterans Appeals' Exclusive Jurisdiction

Section 705(a) of the Committee bill would provide that the statute (section 4052(a) of title 38) giving the United States Court of Veterans Appeals exclusive jurisdiction over all matters decided by the Board of Veterans' Appeals shall not apply in cases involving VA insurance matters under sections 775 and 784 of title 38 or VA home loan guaranty matters under chapter 37 of title 38, when the notice of disagreement in the case is filed within 30 days after the effective date of the Committee bill.

Background

Prior to the enactment last year of the Veterans' Judicial Review Act, Division A of Public Law 100-687, decisions of the Board of Veterans' Appeals (BVA) were generally final and not subject to court review. There were, however, two types of VA benefits cases that could be reviewed in court—those involving VA insurance matters and those involving VA home loan guaranty matters. Specifically, section 211(a) of title 38, which, prior to its being amended by Public Law 100-687, provided that decisions of the Administrator of Veterans' Affairs (now Secretary of Veterans Affairs) would be final and not subject to court review, included a provision which provided expressly that that section applied "except as provided in sections 775, 784, and as to matters arising under chapter 37".

Section 775 of title 38, which was not amended by Public Law 100-687, provides that U.S. district courts have "original jurisdiction of any civil action or claim against the United States founded upon [subchapter III of chapter 19]", which relates to the Servicemen's Group Life Insurance and Veterans' Government Life Insurance programs. Section 784 (a), which also was not amended by that public law, confers jurisdiction on U.S. district courts to "hear and determine" controversies involving any "disagreement as to [a] claim, including [a] claim for refund of premiums, under contract of National Service Life Insurance, United States Government life insurance, or yearly renewable term insurance."

Section 1820 of title 38, which also was not amended by Public Law 100-687, provides in relevant part, that the Administrator (now Secretary) may sue or be sued "in any court of campetent jurisidiction, State or Federal", with respect to "matters arising by reason of [chapter 37]", relating to VA's home loan guaranty program.

The Veterans' Judicial Review Act addressed section 211(a) by adding a reference to new chapter 72 of title 38 (as added by other sections of that public law) and did not change the references to section 775 and 784 and chapter 37. New chapter 72, which provides for establishment of the United States Court of Veterans Appeals, expressly provides in new section 4052(a), for the Court to have "exclusive jurisdiction to review decisions of the Board of Veterans' Appeals."

As a result of these changes, there are now two methods by which VA insurance and home loan guaranty cases can be reviewed in court. First, under the prior law (which remains intact), a case in either area which has not been considered by the BVA could be heard in an appropriate court—either a U.S. district court for insurance matters or an appropriate Federal or State court for home loan guaranty matters. Second, for matters in either area which have been considered by the BVA, jurisdiction for further review would be in Court of Veterans Appeals. Thus, the choice of which remedy to pursue lies, in the first instance, with the claimant. If the claimant wishes to proceed immediately to court on either an insurance or home loan guaranty matter, that remedy would be available without resort to the BVA. On the other hand, if the claimant wishes to have BVA consider the matter, then appellate jurisdiction would be exclusively in the Court of Veterans Appeals.

Committee bill

There has been some confusion about the impact of new section 4052(a) of title 38 on insurance and home loan guaranty cases, including by VA itself. In a July 12, 1989, report on S. 1243, Secretary Derwinski noted

> Finally, we would like to bring to the Committee's attention an ambiguity in the [Veterans' Judicial Review Act] that should be addressed prior to the commencement of appeals to the CVA [Court of Veterans Appeals]. Under section 211(a)(2) of title 38, section 101 of the Act, sovereign immunity is waived as to matters covered by sections 775 and 784 of title 38, that is, VA insurance matters. Historically, such insurance cases have been subject to judicial review in the U.S. District Courts following a final BVA decision [or, the Committee notes, directly in such courts].
>
> Under section 4052(a) of title 38 as enacted by section 301 of the Act, however, the CVA now has exclusive jurisdiction to review decisions of the BVA, including insurance decisions. In our view, it is not clear in the Act nor [sic] its legislative history whether section 4052(a) is intended to supersede sections 775 and 784 of title 38, thereby implicity divesting the U.S. District Courts of jurisdiction in all VA insurance cases appealed from the BVA, or whether the CVA and U.S. District Courts are to have concurrent jurisdiction in such cases, or whether the CVA is intended to have jurisdiction over appeals from BVA decisions except for insurance cases.

In order to clear up any confusion on this issue and to provide an opportunity for any claimants who might have sought BVA review of either an insurance or a home loan guaranty matter after November 18, 1988, the effective date of Public Law 100-687, with the expectation that they could appeal the BVA decision to a court other than the Court of Veterans Appeals, the Committee bill provides that, notwithstanding section 4052(a), the jurisdiction of the exclusive Court of Veterans Appeals to review BVA decisions in matters covered by sections 775 and 784 of title 38 or arising under chapter 37 shall not be exclusive in any cases in which the claimant files a notice of disagreement under section 4004 of title 38 before the end of a specified "grace period"—that is, the 30-day period which begins on the date of enactment of the Committee bill.

The practical result of this provision, if it is enacted, would be that any insurance or home loan guaranty matter which is appealed to the BVA based on a notice of disagreement filed before the end of the grace period could subsequently be appealed either to the Court of Veterans Appeals or to another appropriate court under otherwise applicable provisions of law. After the end of the grace period, any such claim brought to the BVA could be appealed only to the Court of Veterans Appeals in accordance with the exclusivity provision in section 4052(a).

Judicial Personnel Financial Disclosure Requirements

Section 705(b) of the Committee bill would amend the statute relating to financial disclosure by judicial personnel—section 301 et seq. of title 28 Appendix, United States Code—to add the United States Court of Veterans Appeals to the list of courts covered by that law. As a result of this provision, judges of the Court as well as "judicial employees" of the Court—any employees who are not judges but who are authorized to perform adjudicatory functions or who are paid at a rate at or in excess of the GS-16 level of the General Schedule—would be required to file financial disclosure reports with the Judicial Ethics Committee of the Judicial Conference of the United States. Such financial disclosure reports, which are required to contain detailed specified information regarding the judge or judicial employee's income, would have to be filed initially within five days of being nominated (in the case of a judge) or within 30 days after assuming office (in the case of a judicial employee) and annually, by May 15, thereafter.

The Committee bill would thus establish for the new Court the same financial disclosure requirements as apply to the judges and judicial employees of all Article III courts and the Tax Court and the United States Court of Military Appeals, as well as to the judges of the Court of Claims and the Court of International Trade.

In the cases of judges and judicial employees holding office on the date of enactment of this provision, the Committee bill would require the initial filings within 30 days after that date.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs and savings resulting from the enactment of the Committee bill (as compared to costs under current law) during the first 5 years following enactment would be costs of $83 million in budget authority and savings of $204 million in outlays in FY 1990 and the following costs: $673 million in budget authority and $332 million in outlays in FY 1991; $593 million in budget authority and $280 million in outlays in FY 1992; $388 million in budget authority and $230 million in outlays in FY 1993; and $207 million in budget authority and $212 million in outlays in FY 1994. The cost estimate provided by CBO, setting forth a detailed breakdown of the cost and savings, follows:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

September 12, 1989

Honorable Alan Cranston
Chairman
Senate Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for S.13, the Veterans' Benefits and Health Care Act of 1989, as ordered reported by the Senate Committee on Veterans Affairs, July 27, 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer

Attachment

cc. Honorable Frank H. Murkowski
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

September 12, 1989

1. BILL NUMBER: S.13

2. BILL TITLE:

   The Veterans' Benefits and Health Care Act of 1989.

3. BILL STATUS:

   As ordered reported by the Senate Committee on Veterans' Affairs, July 27, 1989.

4. BILL PURPOSE:

   To increase the monthly rates of disability compensation and dependency and indemnity compensation, to increase services available to veterans suffering from post-traumatic stress syndrome, to require VA to establish and maintain levels of pay for nurses that are competitive with the prevailing wages in each labor market area, to establish a new revolving fund to finance the VA home loan guaranty program, and for other purposes.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Function 700					
Direct Spending:					
Budget Authority	-75	460	354	182	6
Outlays	-301	161	69	-10	-30
Authorizations:					
Authorization Level	158	199	201	145	125
Outlays	97	157	173	179	166
Total Function 700:					
Budget Authority	-75	460	354	182	6
Authorization Level	158	199	201	145	125
Outlays	-204	318	242	169	136
Function 900					
Direct Spending:					
Budget Authority	*	14	38	61	76
Outlays	*	14	38	61	76

ESTIMATED COST TO THE FEDERAL GOVERNMENT: (continued)

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Net Budget Impact					
Budget Authority	-75	474	392	243	82
Authorization Level	158	199	201	145	125
Outlays	-204	332	280	230	212

The effects of this bill would fall in budget functions 700 and 900. Unless otherwise identified, savings are to function 700.

Basis of Estimate

The following section-by-section cost analysis addresses only those sections of the bill that could be expected to have a significant budgetary impact.

Section 101. This section would increase the rates of disability compensation and dependency and indemnity compensation (DIC) on December 1, 1989, by the same percentage that Social Security benefits are increased on that date. In calculating the new monthly benefits rates, which are rounded to the nearest whole dollar, the rates for 10 and 20 percent disabilities would be rounded down to the next lower dollar. This increase in benefits would include an increase in the rate payable under paragraph k, section 314, title 38, U.S.C., but the increase in these rates would not be effective until August 1990.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Budget Authority	445	533	529	527	524
Outlays	400	533	529	527	524

The CBO baseline, which was prepared using February 1989 economic assumptions, assumed that a 4.9 percent cost-of-living adjustment (COLA) would be made in Social Security benefit rates on December 1, 1989. The above estimate reflects the cost of a 4.9 percent COLA in compensation rates with the new rates for 10 and 20 percent disabilities rounded down. A more recent economic forecast indicates that the Social Security COLA is more likely to be 5.2 percent. Under this scenario, the compensation COLA authorized by section 101 would increase function 700 budget authority and outlays by $476 million and $429 million, respectively.

These estimates were calculated by multiplying the average costs in each year for all disability compensation cases and for all DIC cases by the COLA percentage. The resulting average increase in costs per year were then multiplied by the estimated number of cases in each program each year to calculate the annual cost. Future average cost and caseload levels were projected according to historical trends for recipients by period of service.

The effects of rounding down in the benefit calculation were estimated by determining the number of beneficiaries with combined degrees of disability of 10 or 20 percent. Because each of these beneficiaries would have his monthly check reduced by $1 under the rounding down calculation, the number of affected beneficiaries was multiplied by the number of benefit payments in the year to estimate the savings from rounding down. With a 5.2 percent COLA, only veterans with 10 percent ratings would be affected, because the new monthly benefit amount for 20 percent disability would round down under normal rounding rules.

Section 103. Under current law, a veteran-pensioner who has no dependents and who is hospitalized or in a nursing home at VA expense will have his pension reduced to no more than $60 a month after the fourth month of care. Under this provision, pension benefits to such veterans would be reduced to no more than $105 a month. For hospitalized veterans, section 103 also would delay the reduction until after the ninth month of care. The changes would be effective on January 1, 1990.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Budget Authority	4	5	6	6	6
Outlays	4	5	6	6	6

This estimate is based on a one-month count of pension benefits withheld from veterans in hospitals or nursing homes at VA expense. According to this data, 4,032 veterans had $1,059,707 withheld from their pension checks for this reason in February, 1989. The increase in the maximum allowable pension benefit was assumed to affect all 4,052 veterans, increasing their pensions by $45 a month.

The estimated cost of the delay in the benefit reduction for hospitalized veterans assumes that 30 percent of the withholdings were from hospitalized veterans (as opposed to veterans in nursing homes) and that 73 percent of such veterans would be hospitalized for less than the eight months required for a reduction under this provision. These assumptions are based on a distribution of VA inpatients by length of stay.

Section 201. This section would provide entitlement to inpatient or outpatient psychiatric care to veterans who are diagnosed by a VA mental-health professional as suffering from post-traumatic stress disorder (PTSD) that is related to their military combat duty. Under current law, the disorder would have to be formally adjudicated as a service-connected condition before the veteran would be considered entitled to medical care.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	26	28	30	32	34
Outlays	22	28	30	32	34

According to VA data, there are around 39,000 veterans each year who are referred by Vet Centers to VA medical centers to be evaluated for PTSD. Of these, VA estimated that approximately 13,000 veterans needing outpatient treatment do not receive care, because the VA outpatient mental-health treatment capacity is insufficient to handle the workload. This estimate assumes that the outpatient capacity would be expanded under this provision to accommodate the treatment needs of these veterans. According to VA sources, veterans with PTSD usually receive an average of 10 visits per year at an average 1988 cost of $46.51 per visit. This average cost amount was increased for anticipated inflation.

In addition, there are currently about 500 veterans on waiting lists for places in PTSD inpatient treatment programs. This estimate assumes that inpatient treatment facilities would be expanded to accommodate the veterans on the waiting lists. Also based on VA information, it was assumed that inpatient PTSD treatment would involve approximately 90 days of inpatient care over a one-year period. The average per diem cost for all psychiatric inpatient care ($184 in 1988) was used to calculate the cost.

Section 203. This section would extend for three years the program of community-based residential treatment for chronically mentally ill veterans.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	14	15	16	0	0
Outlays	12	15	16	2	0

In fiscal year 1989, $13.3 million was appropriated for residential treatment of chronically mentally ill veterans. This amount was increased for anticipated inflation to estimate the authorization level in 1990-1992. The full authorized amount was assumed to be appropriated. Outlays were estimated according to historical spending patterns for this activity.

Section 204. This section would require VA to establish a network of five regional centers for mental-illness related research, education, and clinical activities. In 1990, $3.125 million is authorized to be appropriated for this activity, and $6.25 million in each of fiscal years 1991-1993.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Authorization Level	3	6	6	6	0
Outlays	1	6	7	7	*

The authorization levels stated in the bill were assumed to be fully appropriated. The outlays were estimated according to historical spending patterns adjusted to reflect the slower initial spending of a new program.

Section 211. This section would authorize VA to provide services to achieve pregnancy to a veteran or a veteran's spouse where such services are necessary to overcome a service-connected disability that impairs the veteran's ability to procreate.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Estimated Authorization Level	1	2	1	1	2
Outlays	1	2	1	1	2

The above estimate includes the cost of three treatment modalities: artificial insemination, in vitro fertilization, and drug and hormonal therapy. If any of these modalities are prohibited, or if new forms of treatment are developed, the cost of this provision could be significantly different from the estimate above.

This estimate is based primarily on data from two studies published by the Office of Technology Assessment (OTA): Infertility: Medical and Social Choices (OTA-BA-358, May 1988) and Artificial Insemination: Practice in the United States (OTA-BP-BA-48, August 1988). According to these sources, there are nearly 16,000 male veterans and 1,200 female veterans who are under age 55 and who have service-connected conditions related to infertility.

It was assumed that all affected male veterans would be potential candidates for artificial insemination, involving either the veteran's sperm or donor sperm. Since some of these veterans would not seek such services and some will have utilized services elsewhere, only 2,300 veterans were assumed to apply for artificial insemination services from VA over a ten-year period. The average cost of services was estimated at $2,316 in 1990. This cost was increased for anticipated inflation in the out-years.

Of the female veterans, 434 were estimated to be candidates for in vitro fertilization, and 80 were assumed to seek treatment from VA over a six-year period. Eight newly disabled female veterans were also assumed to seek treatment each year. According to the OTA study, the total cost of in vitro fertilization would be approximately $28,700 in 1990. This cost, however, would be spread over the typical four-year course of treatment.

An additional 274 female veterans were assumed to be candidates for hormone/drug therapy. It was estimated that 40 of these would seek treatment from VA over 6 years. The estimated cost for this form of treatment, which averages around three years in duration, would be approximately $11,700 in 1990.

Section 212. This section would establish a pilot program to provide non-institutional, supervised housing -- referred to as therapeutic residences (TRs) -- for participants in VA Compensated Work Therapy (CWT) programs. The TRs could be established in two ways: directly by VA or by private non-profit corporations that operate CWT programs for veterans. Non-profit corporations wishing to participate in the TR program would be eligible for subsidized loans from VA to assist with the acquisition of residences. VA medical centers wishing to establish TRs could purchase houses from the real property inventory of the Loan Guaranty Revolving Fund at discounted prices. An appropriation of $5 million is authorized to the Special Therapeutic and Rehabilitation Activities Fund (STRAF) in 1990 to finance the pilot program.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	5	0	0	0	0
Outlays	1	3	*	*	*

* Less than $500,000.

The authorization levels stated in the bill are assumed to be fully appropriated and to outlay according to the typical spending pattern for activities of this type.

Section 213. This section would require VA to conduct a four-year pilot program of noninstitutional alternatives to nursing home care. Under the pilot program, contract services; such as homemaker, transportation, rehabilitation, and personal care services; would be provided to enable certain veterans to manage outside of a nursing home. The cost of these services for a veteran could not exceed 65 percent of the cost of furnishing nursing home care to the veteran.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	4	8	10	13	0
Outlays	4	8	10	13	0

The above estimate assumes that 300 veterans would participate in the program in 1989 at ten demonstration sites, with the number growing to 700 participants by 1993. It was also assumed that any nursing home beds vacated by veterans participating in the pilot program would be filled by other eligible veterans currently on waiting lists for nursing home beds.

Because the cost of the alternative services would be limited to 65 percent of the cost of nursing home care ($19,637 on the average per patient treated in 1988), it would cost significantly less to care for veterans in this manner than as nursing home patients. However, because it was assumed that any nursing home vacancies created by the pilot program would be filled from waiting lists, the cost of contract home-care services would not be offset to any significant degree by reductions in the cost of nursing home care.

Section 214. This section would extend the authorization of the VA preventive medicine program through 1994. While the language of the section does not specifically authorize appropriations for this activity, maximum annual expenditure limits are established.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	16	17	18	19	20
Outlays	14	17	18	19	20

This estimate assumes that funds equal to the maximum annual expenditure limits stated in the bill would be appropriated for this activity. Outlays are estimated according to historical spending patterns for the Medical Care account.

Section 215. This section would extend through 1991 the authority of VA to provide respite care. The respite care program provides up to 30 days of inpatient care per year to chronically ill veterans who are being cared for at home.

These inpatient stays provide a respite to the caregiver from the stress of caring for the chronically ill veteran.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Estimated Authorization Level	7	8	0	0	0
Outlays	6	8	1	0	0

According to VA data, approximately 1,800 individuals were provided respite care in 1988, and it is expected that the demand for such care would remain fairly stable at this level in the future. VA has not, however, collected data on the average number of days of respite care provided or the cost of care. The above estimate assumes that all individuals would receive the legal maximum of 30 days of care per year. Because respite care is provided in a nursing home in the vast majority of cases, the average per diem cost of VA nursing home care was used to calculate the cost of respite care.

Sections 216. Section 216 would establish a pilot program during fiscal years 1990-1993 under which VA would furnish helper monkeys and dogs to quadriplegic veterans.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Estimated Authorization Level	1	*	*	*	0
Outlays	1	*	*	*	0

* Less than $500,000.

The above estimate assumes that VA would furnish 40 quadriplegic veterans with either a specially-trained helper monkey or a specially-trained helper dog. It was assumed that 20 monkeys and 20 dogs would be furnished. Based on information from the Senate Veterans' Affairs Committee staff, the average cost of a helper monkey, including teaching the veteran how to interact with the monkey, is estimated at $20,000. The average cost of a helper dog is estimated at $7,500.

Many places that train helper monkeys and dogs request payment of the full price for the animal before they will begin to train it. Thus, it is expected that VA would be required to outlay the funds for most of the animals in the first year, even though some of the animals would not be placed in the first year.

Section 218. This section would extend for three years the authorization of the appropriation of such sums as may be necessary for grants to states for the construction of state veterans' homes.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Estimated Authorization Level	44	46	48	0	0
Outlays	0	9	22	34	37

The authorization level was estimated by increasing the 1989 appropriation for this program by the GNP deflator to account for anticipated inflation. These funds were assumed to be fully appropriated and to outlay according to historical spending patterns.

Section 251. This section would require each VA health-care facility to perform an annual survey of wage rates for nurses and certain other medical personnel in its locality. Based on this survey, VA wage rates would be adjusted to a level competitive with the rest of the community. Rates for existing VA personnel could only be adjusted if the survey indicates that an increase is appropriate. Rates for new hires, however, could be increased or decreased to be brought into line with the community standard. The first surveys would be conducted no later than June 1, 1990, with the corresponding salary adjustment effective with the first pay period beginning on or after July 1, 1990. Thereafter, annual surveys would be conducted by December 1 of each year, with adjustments effective with the first pay period beginning on or after the following January 1.

The cost of this provision cannot be estimated effectively before the first set of wage surveys is conducted, because there is no data base available that is adequate to compare salaries of VA and non-VA nurses on a locality-by-locality basis. The cost of the provision, however, is not expected to be large, because VA already pays special salary rates to nurses in 138 facilities to enable them to compete in their local hiring markets. The level of the special rates varies from facility to facility, and requested increases in special rates are usually approved in a matter of days. It is, therefore, expected that the special pay rates currently in effect keep salaries for VA nurses fairly competitive.

Under current law, however, there is a limit on the extent to which salaries under special pay rates can exceed the base salary structure. In a few VA facilities, this limitation has been reached. The limitations on the increases in the wage structure allowed by the proposal are considerably higher than the current special pay limits, and they would enable those facilities at the special pay maximum to grant additional increases in nurses salaries. (See also section 257.) This would result in some additional cost. The first salary adjustment under the proposal would not take effect until July 1990, however. The number of facilities that will have reached the limit of the special pay rates at that time could be significantly greater or less than the present number. Thus, it is impossible to estimate with any precision the cost of the increase in the salary limits.

Section 254. Under current law, a nurse working overtime is paid at 150 percent of her hourly rate of pay, up to 150 percent of the minimum rate payable to an Intermediate grade nurse. This section would remove the limitation, allowing nurses to receive overtime pay at 150 percent of their basic pay rate, regardless of their grade level.

(By fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	3	3	3	4	4
Estimated Outlays	3	3	3	4	4

In fiscal year 1988, VA nurses worked nearly one million hours of overtime, earning more than $32.5 million in overtime pay. It was estimated that the average hourly overtime rate -- approximately $33 in 1988 -- would increase by around $3 as a result of this provision. It was assumed that the number of hours of overtime worked would remain the same in future years.

Section 255. This section would provide that nurses who are holding head nurse positions would have their hourly rates of pay increased by 6 percent.

(By fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	5	5	5	6	6
Estimated Outlays	5	5	5	6	6

According to VA data, there are 2,337 head nurse positions in the VA system. The current average salary for these positions is $34,320. The average increase in pay for head nurses under this measure would be $2,059. This increase would grow in future years with federal payraises.

Section 257. This section would increase the maximum amount by which special pay rates could exceed base pay rates.

Once section 251 of this bill takes effect with the first pay period that begins on or after July 1, 1990, this provision would not have a significant impact. However, in the period between the enactment of the bill and the effective date of section 251, some nurses could have their salaries increased under this section. According to VA data, Junior grade nurses in 15 VA facilities are currently being paid at the special rate maximum. In 4 of those facilities, Associate grade nurses are also being paid at the special rate maximum. This provision would allow VA to increase special pay rates in these areas above the current law maximum, effective upon enactment of S.13.

According to VA data, there are only around 160 nurses in the 15 facilities cited above who are being paid at maximum special pay rates. Since some of the 15 facilities may not need an increase by July 1990, it is not expected that section 257 would generate a cost of more than $500,000. If, however, a substantial number of other facilities reach the ceiling and need to exceed it before next July, the cost of this section could run over $1 million.

Section 259. This section would provide that, whenever a nurse obtains recertification in her specialty, the nurse would receive a bonus equal to 1.0 percent of her base pay.

VA currently increases the pay of any nurse obtaining certification in a specialty by between one and five pay steps. No increase or award is currently made, however, for recertification.

VA has no data on the number of nurses receiving recertification each year, the number of nurses newly certified per year, or even the total number of nurses who are certified. Thus, it is not possible to make a reliable estimate of the cost of this provision. If it is assumed that 50 percent of all VA nurses are currently certified and obtain recertification every five years, the cost of recertification bonuses would be approximately $1 million per year. If 75 percent are certified, the cost of bonuses would be around $1.5 million annually.

Section 262. This section would require VA to establish a voluntary leave transfer program and a voluntary leave bank program for health-care professionals who are covered under title 38, U.S.C., rather than under title 5.

	(By fiscal years, in millions of dollars)				
	1990	1991	1992	1993	1994
Estimated Authorization Level	2	2	2	2	2
Estimated Outlays	2	2	2	2	2

During the last part of fiscal year 1988, the Office of Personnel Management (OPM) conducted a government-wide pilot program of voluntary leave sharing. All agencies were allowed to participate, though none were required to. At least 71 agencies participated in the program and reported their results to OPM, covering, on the average, one quarter of the fiscal year. Approximately 391,000 hours of leave were voluntarily donated to 1,969 employees.

If OPM's initial experience is duplicated in VA, approximately 450 title 38 employees would be expected to utilize an average of 200 hours of donated leave each year in lieu of taking leave without pay. This estimate could be understated or overstated if the usage of the VA program is significantly different from OPM's experience in the pilot program.

Section 264. This section would authorize the payment of performance awards and cash awards to VA employees who are employed under the authority of title 38, U.S.C., rather than under title 5. The new VA performance and cash awards would mimic those under sections 5406 and 5407 of title 5. This provision would take effect on October 1, 1990.

(By fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	0	27	29	30	31
Estimated Outlays	0	26	29	30	31

According to VA data, approximately $1.9 billion will be expended for basic pay to title 38 employees during fiscal year 1989. The formula in section 5406 of title 5 specifies that the amount of total performance awards in an agency should be not less than 1.15 percent and not more than 1.5 percent of aggregate basic pay. The above estimate assumes that the mid-point of this range would be applied. Thus, 1989 aggregate basic pay was multiplied by 1.325 percent and the result was increased for future federal payraises.

No cost is included above for cash awards to title 38 employees, because VA already includes title 38 employees in its existing cash awards program.

Section 265. This section would require VA to establish and conduct a dependent care assistance program that meets the requirements of section 129 of the Internal Revenue Code of 1986 for employees of the Veterans Health Services and Research Administration.

Section 129 of the Internal Revenue Code of 1986 allows employers to establish dependent care assistance programs, under which employees may have amounts withheld from their pay to be set aside for dependent care. Amounts withheld would be excluded from income for tax purposes. The language of this section provides no guidelines as to the form the VA dependent care assistance program would take. Nor does it specify how, where, or under whose control the withheld funds would be maintained. Until the structure of this new program is defined by VA, it is not possible to estimate its budgetary impact with any degree of precision.

Section 267. This section would authorize the appropriation of $5 million each year in 1990 and 1991 and $6 million each year in 1992 and 1993 for Health Manpower Training Grants.

(By fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Authorization Level	5	5	6	6	0
Estimated Outlays	*	1	2	3	4

* Less than $500,000.

There has been no appropriation made to this program in several years. Historically, the program has expended its funds very slowly. This phenomenon is recognized in the fact that the bill language authorizes the funds to remain available for five fiscal years after the year for which they are appropriated. The above estimate assumes that the amounts specified would be fully appropriated and would outlay according to historical trends.

Section 268. This section would require VA to pay the maximum amount of special pay authorized by law for VA physicians and dentists.

(By fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Estimated Authorization Level	24	24	24	24	24
Estimated Outlays	23	24	24	24	24

In 1982 VA imposed a cap on the maximum amount of special pay to their physicians and dentists. According to VA, the pay loss resulting from this cap ranges from $391 a year for those in the chief grade to $2,756 for some executive grade physicians and dentists. VA has calculated the total value of the offset at $24.2 million. The total amount will not vary with inflation after 1990, because special pay rates are not automatically increased for inflation.

Section 269. This section would require VA to conduct a pilot program of pay and personnel management practices. The pilot program would be conducted in not less than 5 medical centers during calendar years 1990-1992.

(By fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Estimated Authorization Level	1	1	1	0	0
Estimated Outlays	1	1	1	0	0

VA would be required to explore a wide variety of new pay schemes and personnel practices in this pilot program. While only a few of the options to be examined would involve direct costs in the form of increased pay or benefits, the administrative costs of operating the pilot program are expected to be significant.

Section 301. This section would increase by 9.5 percent the rate of rehabilitation subsistence allowances under Chapter 31, title 38, U.S.C., for veterans with service-connected disabilities. This increase would become effective January 1, 1990.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Budget Authority	4	6	6	6	6
Outlays	4	6	6	6	6

Based on information from VA, the subsistence portion of the average vocational rehabilitation benefit is approximately 55 percent. The estimate above is based on an increase of 9.5 percent for 55 percent of the baseline average benefit for vocational rehabilitation assistance. This would mean an average annual benefit increase for approximately 23,000 recipients of about $185 in 1990, when the provision is effective for three quarters of the year, and $250 in 1991, rising to $255 by 1994.

Section 302. This section would increase by 9.5 percent the rates of educational assistance for survivors and dependents who are eligible for education benefits under chapter 35 of title 38, U.S.C. This increase would become effective January 1, 1990.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Budget Authority	7	8	8	7	7
Outlays	7	8	8	7	7

The estimate above is based on a 9.5 percent increase in average benefits for survivors and dependents. Approximately 4,000 survivors would receive an average benefit increase of about $140 in 1990, when the provision would be effective for three-quarters of the year, and about $185 in 1991. By 1994 about 3,000 survivors would receive an average benefit increase of $185. Dependents are more numerous and receive slightly higher average benefits than survivors. In 1990 approximately 35,000 would receive an average increase of $175. In 1991 about 32,000 would receive an average increase of $230, and by 1994 about 26,000 would receive about the same increase.

Section 305. This section would expand the work-study program to individuals training under chapter 106 of title 10 and would allow all work-study payments to be based on either the federal or state minimum wage, whichever is higher. This provision would be effective May 1, 1990.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Budget Authority	2	6	6	6	6
Outlays	2	6	6	6	6

Based on the work-study experience of other education programs, an estimated 1.4 percent of trainees would use the equivalent of full-time work study, or 750 hours over a year of training. This would be approximately 1,700 chapter 106 trainees in 1990, rising to about 2,000 each year after that. These trainees would be paid the higher of the minimum wage in the state or the federal minimum wage. Other trainees who currently use work study would also be allowed to receive the higher of the federal or state minimum wage. Including the territories and the District of Columbia, there are 14 states that have a higher minimum wage than the federal standard of $3.35. Based on the proportion of veterans who train in these states, allowing the higher state minimum wages would raise work-study costs by about 5 percent or between $400,000 and $500,000 a year.

Section 306. Effective on May 1, 1990, section 306 would allow dependents and survivors of service-connected disabled veterans to receive work-study allowances while using education benefits.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Budget Authority	1	1	1	1	1
Outlays	1	1	1	1	1

The methodology for estimating section 306 was identical to that for section 305. Because the effective date is August 1, 1990, few people would use work-study in 1990. In 1991 approximately 500 people are expected to use it. The number of users would fall to about 400 by 1994. These people would receive the higher of the state or federal minimum wage and are assumed to use 750 hours worth over the year.

Section 315. This section would provide VA with discretionary authority to require monthly self-certification of training for all education programs. VA would not make monthly benefit payments until certification of attendance is received. Under current law this is required of trainees under the chapter 30 program of title 38 U.S.C., but not for chapters 31, 32, 34, or 35 in the same title or under the chapter 106 program in title 10 U.S.C.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Estimated Authorization Level	2	2	2	2	2
Estimated Outlays	2	2	2	2	2

It is assumed VA would employ the self-certification for chapters 32 and 35 of title 38 U.S.C. and chapter 106 of title 10 U.S.C. It is not expected that VA would use it for chapters 31 or 34, because trainees under the chapter 31 program are already closely monitored, and the chapter 34 program will expire December 31, 1989. The estimated authorization levels are based on the average number of trainees for each program affected -- approximately 270,000 combined in 1990, falling to 240,000 by 1994 -- multiplied by seven months of benefits a year, then by the associated mailing and handling costs of notices per month. The mailing and handling costs are based on information from VA.

If funds are appropriated for these monthly certifications, there could be an estimated savings of $5 million a year in the form of reduced benefit overpayments. Based on information from a 1987 VA study, Cost-Effectiveness Study of School Liability Procedures Under 38 USC Sec. 1785, and conversations with VA personnel, an estimated 50 percent of benefit overpayments could be avoided through monthly self-certifications. For the three programs involved, this would result in reduced overpayments of about $15 million a year. Assuming current VA collection rates on education overpayments, about two-thirds of this money would be collected. This leaves savings of about $5 million a year, i.e., the difference of the amount of reduced overpayments and the amount of those overpayments VA would expect to collect.

Section 319. This section would remove the restriction on the number of changes in education program that a student receiving VA education assistance can make. Any student who makes two or more changes would be required to accept educational or vocational counseling. This would become effective August 1, 1990.

(by fiscal years, in millions of dollars)	1990	1991	1992	1993	1994
Budget Authority	*	1	1	1	1
Outlays	*	1	1	1	1

* Less than $500,000.

Based on information from VA, approximately 3 percent of trainees would make a second change in educational program. The additional cost of this proposal would result from the required counseling for these people. CBO assumes that about 50 percent of the affected trainees would already be using VA counseling services. The remainder, approximately 5,000 a year from 1991 through 1994, would require counseling, which is estimated to cost about $200 a person in 1991. Costs for counseling are expected to rise with inflation. Because the effective date is late in fiscal year 1990, relatively few people are expected to need counseling in 1990.

Sections 401-403. These sections would replace the existing VA home loan guaranty program with a new and very similar home loan program. A new revolving fund, the Home Loan Guaranty Fund (HLGF), would be established to manage the financial activities of loans guaranteed after September 30, 1989. The Loan Guaranty Revolving Fund (LGRF) would remain responsible for all financial activities related to loans guaranteed prior to the effective date.

Under current law, all veterans receiving a VA guaranty of a mortgage (except those with service-connected disabilities) must pay an origination fee of 1 percent of the mortgage principal. The authority to charge this fee expires after September 30, 1989. Under the proposed program, the origination fee would be permanently authorized and would vary with the type of loan. Veterans whose loans have a loan-to-value ratio of 95 percent or more would be required to pay a fee of 1.25 percent of the mortgage amount. Veterans making down payments of 5 percent or more would pay a fee of only 0.75 percent. A 10 percent or greater down payment would further reduce the fee to only 0.25 percent. Individuals assuming VA-guaranteed loans currently pay a fee of 0.5 percent; their fee would increase to 0.75 percent. Service-disabled veterans would continue to be exempt from paying fees.

In recognition of the fact that these fees are not sufficient to fully offset the future cost of defaults on these loans, the government would also contribute a share of the expected default costs at the time of loan origination. Government contributions of 0.75 percent of the mortgage principal would be made to the HLGF for each new loan guaranteed. These contributions, however, would be spread over three years, with 0.25 percent paid in each of the first three years after origination. For loans originated in 1990, the three-year period for government contributions would be delayed until 1991-1993. The government would also contribute to the fund an amount equal to value of origination fees that would have been paid by service-disabled veterans were they not exempt. VA also would be authorized to invest the fees, contributions, and any other unobligated balances of the HLGF in U.S. Treasury securities.

Finally, veterans obtaining mortgages under the new program would not be held liable for any debt related to the mortgage that is not satisfied by the sale of the securing property after foreclosure.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Function 700					
Loan Guaranty Revolving Fund					
Borrowing Authority	0	-3	-22	-69	-130
Deficiency Appropriation	-8	-24	-112	-289	-430
Total Budget Authority	-8	-27	-134	-358	-560
Outlays	-6	-26	-133	-357	-559
Home Loan Guaranty Fund					
Borrowing Authority	0	3	22	69	130
Agency Contributions	0	107	143	192	156
Deficiency Appropriation	0	0	0	0	0
Total Budget Authority	0	110	165	261	286
Outlays	-183	-190	-119	73	255
Total Function 700					
Borrowing Authority	0	0	0	0	0
Agency Contributions	0	107	143	192	156
Deficiency Appropriations	-8	-24	-112	-289	-430
Total Budget Authority	-8	83	31	-97	-274
Outlays	-189	-216	-252	-284	-304
Function 900					
Budget Authority	*	14	38	61	76
Outlays	*	14	38	61	76

	(by fiscal years, in millions of dollars)				
	1990	1991	1992	1993	1994
Net Budgetary Impact					
Budget Authority	-8	97	69	-36	-198
Outlays	-189	-202	-214	-223	-228

* Less than $500,000.

Under the provisions of sections 401-403, there would be three types of budget authority available to the home loan program. Borrowing authority would be created by the sale of loan assets with recourse to the government in the event of default. The federal government's 0.75 percent contribution for each loan guaranteed would require appropriated budget authority. And, finally, appropriations would be required to the LGRF to offset deficiencies in the fund. The table above separates the total budget authority impact of the provisions into these three components for informational purposes.

This estimate was prepared from a model that interrelates the various obligation and collection activities of the veterans' home loan guaranty program. The model is based on historical relationships and projects these relationships using past trends and expectations of future economic activity.

Even though this provision would abolish the current VA home loan program and would replace it with a new program, the effects on VA loan guaranty activities would be relatively minor. The provision is essentially a financing measure, designed to ensure that sufficient capital is placed in the revolving fund at the time new loans are guaranteed to cover the anticipated cost of defaults of those loans.

The major budgetary impact of the bill results from the permanent authorization of loan origination fees. The authority to charge origination fees expires under current law on September 30, 1989. The receipts from fee collections account for $173 million of the $189 million total outlay reduction in 1990.

The future outlays of the LGRF would be expected to fall substantially under this measure, because the default costs of loans insured after October 1, 1989, would be paid from the HLGF. Also, the obligations of the LGRF will continue to be offset by the proceeds from sales of real property and loan assets that result from the foreclosure of loans guaranteed under the old program.

The HLGF would experience negative outlays in 1990-1992, while the default costs of new loans are less than the amount of fees collected on new loans. After 1992, HLGF default costs are expected to exceed offsetting collections and to result in positive outlays. This does not mean that the HLGF would operate at a deficit during this period, however. The HLGF should continue to carry a significant unobligated balance through the 1990s as a result of federal contributions and proceeds from loan sales. These two forms of financing would increase the balances of the fund that are available for obligation but would not offset outlays. (Section 404 would change the accounting of proceeds from loan sales. The effects of this change are discussed under that section.)

The elimination of the continuing liability of defaulting borrowers for any debt remaining after the foreclosure sale of the securing property should have a small impact on the revolving fund, because VA collects only about 7 percent of such debt now. It is not expected that this release from liability would significantly influence the default rate.

Additional Function 700 outlay savings are generated by the authority of the HLGF to invest the unobligated balances of the fund in Treasury securities. It was assumed that fund balances would be invested in 90-day Treasury bills. Interest collections are estimated at around $189 million between 1990 and 1994. While these collections would reduce the outlays of the HLGF, they would cause an equivalent increase in outlays from the Treasury (Function 900). Thus, there would be no net effect of this provision on total federal spending.

Section 404. Under current law VA is required to recommence selling vendee loans with recourse as of October 1, 1989. This section would postpone that deadline for one year. In addition, section 404 would specify that the proceeds of vendee loan sales, regardless of whether the sales are with or without recourse, would be credited as offsetting collections of the revolving fund. Under the current accounting rules, the proceeds of the sale of loans with recourse are treated as a form of financing.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Loan Guaranty Revolving Fund					
Borrowing Authority	-794	0	0	0	0
Deficiency Appropriation	298	-82	-57	-45	-36
Total Budget Authority	-496	-82	-57	-45	-36
Outlays	-496	-82	-57	-45	-36

The savings from the extension of authority to sell loans without recourse result from the fact that proceeds from the sale of loans without recourse presently are credited to the revolving fund as offsetting collections, while proceeds of recourse loan sales come into the revolving fund as an increase in the unobligated balance of the fund. Offsetting collections directly offset outlays and reduce the need for appropriations to finance fund deficiencies. An increase in the unobligated balance, on the other hand, will also reduce the fund's appropriation requirements, but it will have no affect on outlays. Further, budget authority in the form of borrowing authority is generated by recourse sales, because they are considered to be the equivalent of borrowing. As a result of these accounting differences, the budget authority and outlays of the revolving fund would be reduced by the continuation of non-recourse loan sales, even though the net long-term return from non-recourse sales is less than the comparable return from recourse sales.

The estimate assumes that VA would employ the same senior/subordinate sales structure in 1990 that was used for non-recourse sales in 1988 and 1989. It was also assumed that the return on the 1990 sales would be similar to that experienced in 1988 and 1989. The out-year savings represent the income from the subordinate certificates that are retained by VA as part of the proceeds from the senior/subordinate sales structure, combined with the reduction in the cost of repurchasing defaulted loans. The effects of section 404 on the HLGF, established by section 404, would be negligible, because the HLGF would have few, if any, vendee loans established in its first year of operation.

This cost estimate reflects no budgetary effect of the language specifying that all proceeds from loan sales, whether they are with or without recourse, be scored as offsetting collections. It is CBO policy that provisions that change existing accounting practices are not scored until after enactment. If CBO were to score bills under a proposed practice rather than under existing scorekeeping rules, we would be changing the rules at the suggestion of one Member or committee, rather than at the direction of the entire Congress. Shown below, however, are the additional reductions that would be expected to occur if the proceeds of recourse sales after 1991 were credited to the revolving fund as offsetting collections. This estimate is provided for informational purposes only and is not included in the total estimated impact of the bill.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Loan Guaranty Revolving Fund					
Borrowing Authority	0	-752	-700	-618	-522
Deficiency Appropriation	0	0	0	0	0
Total Budget Authority	0	-752	-700	-618	-522
Outlays	0	-752	-700	-618	-522
Home Loan Guaranty Fund					
Borrowing Authority	0	-3	-22	-69	-130
Agency Contributions	0	0	0	0	0
Deficiency Appropriation	0	0	0	0	0
Total Budget Authority	0	-3	-22	-69	-130
Outlays	0	-3	-22	-69	-130
Total Function 700					
Borrowing Authority	0	-756	-722	-687	-652
Agency Contributions	0	0	0	0	0
Deficiency Appropriations	0	0	0	0	0
Total Budget Authority	0	-756	-722	-687	-652
Outlays	0	-756	-722	-687	-652

Section 405. This section would allow a veteran to acquire additional loan guaranty entitlement by paying a higher origination fee. A veteran could purchase up to $5,000 additional guaranty by paying a supplemental fee of 0.1 percent of the purchase price for each $1,000 added to the guaranty.

There is no data on which to base an estimate of the impact of this provision. Nor are there any programs with similar provisions that could be used to estimate the number of veterans who would be likely to exercise this option. However, because the current guaranty limit allows a veteran to purchase a home costing up to $144,000 without a down payment, it is expected that the number of veterans purchasing additional entitlement would be small. Further, because default rates on high-value mortgages tend to be lower than the average, the additional fees paid by veterans for the extended guaranty would probably exceed the resulting increase in future default costs.

Section 406. This section would change the formula used by VA to determine if it will acquire at foreclosure the property securing a VA-guaranteed loan, or if it will pay the guaranty and leave the property with the lender. Section 406 would require VA to include in its calculation of the net value of a property one-half of the cost to the government of borrowing the funds necessary for the property acquisition.

(by fiscal years, in millions of dollars)

	1990	1991	1992	1993	1994
Loan Guaranty Revolving Fund					
Borrowing Authority	0	-27	-29	-28	-24
Deficiency Appropriation	-34	-6	2	9	12
Total Budget Authority	-34	-33	-26	-19	-12
Outlays	-34	-33	-26	-19	-12
Home Loan Guaranty Fund					
Borrowing Authority	0	-*	-1	-4	-8
Agency Contributions	0	0	0	0	0
Deficiency Appropriation	0	0	0	0	0
Total Budget Authority	0	-*	-1	-4	-8
Outlays	0	-1	-3	-9	-14
Total Function 700					
Borrowing Authority	0	-27	-30	-32	-32
Agency Contributions	0	0	0	0	0
Deficiency Appropriations	-34	-6	2	9	12
Total Budget Authority	-34	-33	-28	-23	-20
Outlays	-34	-33	-30	-28	-26

On July 19, 1989, VA published regulations that would include the full amount of the government's cost of borrowing in the calculation used to determine whether VA should acquire a property at foreclosure in order to satisfy the guaranty on a defaulted loan. The regulations were scheduled to take effect on August 21, 1989. However, on August 18, 1989, the U.S. District Court for the District of Columbia issued a preliminary injunction against the implementation of these regulations in connection with the civil action (no. 89-1841), Mortgage Bankers Association of America v. Edward J. Derwinski, Secretary of the Department of Veterans Affairs, et al.

Because a change in regulation was not anticipated at the time the CBO baseline was developed, it is not reflected in the baseline projection or in the budget resolution for 1990. The estimate above, therefore, shows the effect of section 406 on the LGRF and the new Home Loan Guaranty Fund (established by section 401), unaffected by VA's proposed regulatory change. This estimate assumes that the number of "no-bids", those foreclosures in which VA pays the guaranty and leaves the property with the lender, would increase by approximately 4 percentage points, from the current level of about 25 percent to around 29 percent.

The CBO sequester base, which shows the status of anticipated current law spending as of August 15, 1989, assumes that VA regulations would take effect on August 21, 1989. The 1990 budget authority and outlays of the LGRF were reduced by $117 million to account for the effects of the regulations. Because VA regulations would include the full cost of borrowing in the calculation and section 406 would include only half of such cost, enactment of section 406 would increase the CBO sequester base for 1990 by $83 million.

Section 703. This section would amend the Internal Revenue Code of 1986 to authorize access by VA to income information reported by employers, financial institutions, and other organizations to the Internal Revenue Service (IRS). VA would be permitted to use this data to verify the income reported by recipients of VA means-tested benefits, primarily VA pension. The provision would also amend title 38, U.S.C., to require VA to independently verify conflicting data and to provide an opportunity for beneficiaries to contest the findings before benefits are reduced. Further, VA would be required to notify all affected beneficiaries that reported income will be checked against IRS data. Finally, this section would require that the administrative cost of implementing these provisions be paid from funds appropriated to the Compensation and Pensions account.

	(by fiscal years, in millions of dollars)				
	1990	1991	1992	1993	1994
Benefit Savings					
Budget Authority	0	-84	-185	-257	-268
Outlays	0	-84	-185	-257	-268
Administrative Costs					
Budget Authority	*	16	36	50	53
Outlays	*	16	36	50	53
Net Budgetary Impact					
Budget Authority	*	-68	-149	-207	-215
Outlays	*	-68	-149	-207	-215

* Less than $500,000.

This estimate is based on data from two General Accounting Office reports, VETERANS' PENSIONS: Verifying Income with Tax Data Can Identify Significant Payment Problems (GAO/HRD-88-24, March, 1988) and Improving the Integrity of VA's Unemployability Compensation Program (GAO/HRD-87-62, September, 1987). The GAO estimated that approximately $160 million was overpaid in compensation and pension benefits in

1984 that could have been identified through a match of income reports from beneficiaries and reports to the IRS from employers, financial institutions, and other organizations. While a savings of this magnitude should be attainable eventually, it is expected that administrative difficulties would delay the achievement of this level of savings until 1993.

The estimate above assumes that the first computer match would be run on income reported for calendar year 1989. This data, as reported for VA benefit purposes, should be available in early 1990; IRS data for 1989 income should be available in October-November of 1990. Thus, VA should be able to begin investigating and adjudicating dissimilar income reports in early 1991.

The GAO estimated that the administrative cost of identifying these overpayments would be approximately $14 million. This assumed an average administrative cost of $20.32 per case, which would cover 1.12 hours of adjudicator time. CBO expects that the average administrative cost would be about 250 percent higher than estimated by GAO for several reasons. First, VA would be required by the bill to independently verify any reporting inconsistencies and to provide beneficiaries with the opportunity to refute its findings. This would involve considerably more adjudicator time than is provided for in the GAO estimate. Also, the GAO estimate failed to include costs for the investigation of fraud or for the collection of prior overpayments, which would further increase administrative costs.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENT:

Section 218 would extend for three years the authorization of appropriations for grants to states for the construction of state veterans' homes. The federal grant money from this program must be matched by state funds and, to that extent, would affect state budgets. However, participation in the program by a state is totally voluntary; therefore, no obligation against state funds would be created by this provision.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE:

On July 17, 1989, CBO released a cost estimate of the Senate Veterans' Affairs Committee's reconciliation provisions, as ordered transmitted by that Committee to the Senate Committee on the Budget on July 13, 1989. Section 9001(a) of that measure would extend the one percent origination fee for veterans home loan guarantees for one year. This provision is estimated to reduce the budget authority and outlays of the LGRF by $169 million in 1990 and by $10 million in 1991. Because the savings attributable to sections 401-403 of S.13 are largely the result of permanently authorizing the origination fee, the enactment of section 9001(a) before the enactment of S.13 would reduce the savings from sections 401-403 by these same amounts.

Section 9001(b) of the Senate Veterans' Affairs Committee's reconciliation provisions would extend for one year VA's authority to sell vendee loans without recourse to the government in the event of default. This provision is substantively identical to section 404 of S.13. The savings estimated for the two provisions are the same.

On May 17, 1989, CBO prepared an estimate of H.R.1415, as ordered reported by the House Committee on Veterans' Affairs on that same date. This bill is similar in many respects to Title IV of S.13. Differences in the provisions of the two measures, however, result in lower savings estimated for H.R.1415 than for Title IV of S.13.

9. ESTIMATE PREPARED BY:

K. W. Shepherd and Richard Curley (226-2820)

10. ESTIMATE APPROVED BY:

James L. Blum
Assistant Director
for Budget Analysis

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of any individuals or businesses or result in any significant impact on the personal privacy of any individuals and that, except as noted below, the paperwork resulting from enactment would be minimal.

In the cases of provisions requiring reports to the Congress to provide program data and evaluations (sections 204 to 207, 213 to 216, 219, 224, 251, 269, 309, 401, 503, 603, and 701), notices to individuals (703), and the automated exchange of data between Government agencies (section 704), the amount of paperwork would be reasonable in light of the beneficial objectives of the legislation.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at a July 27, 1989, meeting. The Committee voted unanimously to report S. 13, with an amendment in the nature of a substitute, favorably to the Senate by a vote of 10-0, as follows:

YEAS (10)	NAYS (0)
Alan Cranston	
Spark Matsunaga	
Dennis DeConcini	
George J. Mitchell	
John D. Rockefeller IV	
Bob Graham	
Frank H. Murkowski	
Alan K. Simpson	
Strom Thurmond	
James M. Jeffords	

AGENCY REPORTS

On March 2, 1989, the Committee Chairman requested the Administrator of Veterans' Affairs (Secretary of Veterans Affairs as of March 15, 1989) for reports setting forth the agency's views on S. 13. On March 16 and 22, May 9, and June 7, 1989, the Committee Chairman requested the Secretary of Veterans Affairs for reports setting forth the Department's views on S. 564, S. 574, S. 900, and S. 1092 respectively. On June 15, 1989, the Committee Chairman requested the Secretary of Veterans Affairs for reports setting forth the Department's views on S. 1145, S. 1146, and S. 1158, and on June 30 and July 20 and 26, the Department's views on S. 1188, S. 1306, and S. 1341, respectively. The views submitted in response to those requests follow.

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

AUG 10 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for a report on S. 13, 101st Congress, the "Veterans Benefits and Health Care Act of 1989." This measure, if enacted, would, among other things, authorize cost-of-living increases in the statutory rates of disability compensation and dependency and indemnity compensation (DIC) and authorize increases in the allowances paid to disabled veterans pursuing rehabilitation programs and to dependents and survivors of certain disabled veterans pursuing programs of education.

COMPENSATION AND OTHER BENEFITS

Cost-of-Living Allowance: Compensation

Section 101 would authorize cost-of-living increases in the statutory rates of compensation and DIC benefits for veterans and survivors in the same percentage as will be provided to Social Security recipients and VA pension beneficiaries. The proposed rate adjustment is thus designed to assure that these beneficiaries keep abreast of the increasing cost of living. S. 613, which you introduced at the Administration's request on March 16, 1989, would index compensation cost-of-living allowances (COLA's) and thus seeks to accomplish the same purpose through a different approach. Therefore, these measures will be discussed together. Both propose an effective date of December 1, 1989, for the next cost-of-living increase.

Disability compensation benefits are payable under chapter 11 of title 38, United States Code, to provide monetary relief from impairments in earning capacity suffered by veterans disabled during, or as a result of, military service. Rates of compensation vary with the degree of disability demonstrated, and additional compensation is payable for dependents if the veteran's disability is rated 30 percent or more disabling. DIC benefits are payable under chapter 13 of title 38 to the surviving spouses and children of veterans whose deaths are service connected. Payments at DIC rates may also be made if a veteran's death is not service connected but the veteran was rated totally disabled for a specified period prior to death.

Administration of the disability compensation and DIC programs is one of VA's most important missions. We recognize a duty to recommend periodic adjustments in monthly rates as economic conditions change. In recent years, compensation adjustments have generally been keyed to indexed COLA's in Social Security and VA pension. However, these compensation increases have not been automatic. Rather, they have been accomplished by the enactment of separate public laws designed for that purpose, the last being Public Law No. 100-687, title XI, 102 Stat. 4105, 4123 (1988). Since 1973, legislation has been enacted every year but one (1983) granting increases in these benefits to compensate for increases in the cost of living. We have consistently supported these adjustments.

The Administration strongly supports COLA's based upon actual increases in the cost of living. However, we believe this would best be done by legislation that would provide for an automatic annual increase in compensation rates indexed to the periodic Consumer Price Index (CPI) increases, as in the case of pension and a number of other governmental benefits. Tying compensation and DIC rates to the CPI would assure veterans and their survivors that they would receive full increases, commensurate with inflation, in a timely manner. Had such a provision been in place in 1987, there would not have been the unfortunate delay in giving effect to the compensation COLA provided by Public Law No. 100-227 (1987). Our proposal would also save Congress from the difficulty of regularly considering new veterans' COLA legislation, as it has been required to do virtually every year for over a decade and twice in the same year in one instance.

Accordingly, while we do support a cost-of-living increase for compensation and DIC recipients, we feel, for the reasons stated above, that the measure should be amended to index future compensation and DIC COLA's to annual changes in the CPI.

Based on the most recent breakout of the compensation caseload by degree of disability and dependency status, the analogous DIC records, and the currently-planned Social Security increase of 3.6 percent, we estimate the first 5-year cost resulting from enactment of the COLA as specified in S. 13 would be as follows:

	Fiscal Year	Cost ($000)
	1990	$ 335,600
	1991	401,600
	1992	400,600
	1993	399,800
	1994	398,800
Total	(5 years)	1,936,400

Cost-of-Living Allowance: Chapters 31 and 35

Section 102 would amend present section 1508(b) of title 38 relating to rates of subsistence allowance for service-connected disabled veterans participating in rehabilitation programs under chapter 31 of title 38, to increase by 13.8 percent, effective January 1, 1990, the rates of such allowances. Similarly, section 103 would amend chapter 35 of title 38, relating to survivors' and dependents' educational assistance, to increase by 13.8 percent the rates of educational assistance, effective January 1, 1990.

While we cannot support a rate increase of this magnitude, VA does support a 5 percent increase for these benefits in the context of the overall budget negotiations. We estimate the 5 percent rate increase in benefits would cost $5.2 million in FY 1990, with a five-year cost of $32.9 million.

The cost of the 13.8 percent rate increases proposed in sections 102 and 103 is shown below. The 1990 cost reflects costs over a 9-month period beginning with the proposed January 1, 1990, effective date.

Fiscal Year	Chapter 31 Cost ($000)	Chapter 35 Cost ($000)	Total Cost ($000)
1990	$ 6,000	$ 9,000	$ 15,000
1991	8,500	12,500	21,000

1992	8,600	11,600	20,200
1993	8,400	10,800	19,200
1994	8,400	10,000	18,400
	$39,900	$ 53,900	$ 93,800

Clothing Allowance

Section 111 would expand the clothing allowance payable under 38 U.S.C. § 362 to veterans with a service-connected skin condition who use a prescribed medication which the Secretary determines stains or otherwise damages the veterans' clothing. This provision is substantially identical to section 201 of S. 2267 and H.R. 4672, both of which were introduced last session at the request of the Reagan Administration.

Current law provides that a clothing allowance may be paid to a veteran, who, because of service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the veteran's clothing. Veterans with skin disorders have reported that the medications used in treatment of their conditions irreparably stain their clothing. VA has learned that the medication used to treat some unusual skin conditions may in fact cause stains which cannot be removed. Accordingly, section 111 would authorize the Secretary to make a determination whether medication for a service-connected skin condition causes such damage to clothing as to require payment of a clothing allowance.

Benefit and administrative costs for this proposal would be small because of the amount of the authorized clothing-allowance payment and the small number of veterans who would be entitled. We estimate the benefit cost to be less than $1 million in any fiscal year and the administrative cost to be less than $100,000. The Administration strongly supports this proposal.

Pension Benefits for Hospitalized Veterans

Section 112 deals with the reduction of pension benefits for veterans who are receiving extended care at VA expense in hospitals, nursing homes, and domiciliaries. This section would (1) increase the maximum amount payable to such veterans to $105, and (2) in the case of hospitalized pensioners, extend from three to eight calendar months the period after which benefits would be reduced. We do not oppose section 112.

Under current law (38 U.S.C. § 3203(a)(1)(B)), if a veteran pensioner who has neither spouse nor child is being furnished nursing home or hospital care by VA, his or her pension is reduced to $60 per month after three calendar months following admission. Under 38 U.S.C. § 3203(a)(1)(A), pension for such a veteran receiving domiciliary care from VA is so reduced after two calendar months. Section 112 would change the law to increase the amount payable to all such veterans to $105 and, in the case of hospitalized veterans, not reduce payments until eight calendar months following admission. The time following admission after which payments would be reduced would remain unchanged when the pensioner is receiving VA-provided domiciliary or nursing home care.

Awards of need-based pension have long been subject to reduction when the pensioner is hospitalized by VA. Prior to the enactment of Public Law No. 86-211, the law required temporary reduction of a pension award to one-half or $30--whichever was greater--when a pensioner with no wife, child, or dependent parents was hospitalized at VA expense for more than six months. The balance of the award was withheld for the duration of hospitalization, with the withheld amount paid and the full award resumed upon discharge.

Public Law No. 86-211, effective July 1, 1960, established a new system of pension which was intended to make the pension program more reflective of the need concept on which it was based. As part of the redesigned system, 38 U.S.C. § 3203 was amended to provide a new rule of adjustment for veteran-pensioners with no dependents who were hospitalized at VA expense for more than two months. It was reasoned that since such a veteran received all essential care while in the hospital or domiciliary, the need for an income supplement for support was greatly reduced. Accordingly, the law provided that pension for such a veteran should not exceed $30 monthly (later changed to $50, then $60) for the duration of hospitalization and that the full award would be resumed upon discharge.

With respect to the change from $60 to $105 per month, we note that the current amount has been in force since 1979. We believe that an increase may be warranted.

We recognize that although the Government furnishes the great part of the support for a hospitalized veteran without dependents, the veteran may in some cases have continuing obligations and fixed expenses, such as rent.

Unfortunately, the current system may leave a veteran with the difficult choice of remaining in the hospital until well, and losing home and personal possessions, or of leaving the hospital prematurely in order to meet continuing obligations. If the veteran remains long enough for the reduction to go into effect, the institutional stay may be unnecessarily prolonged since it may be difficult to place the veteran back in the community when he or she lacks funds for a security deposit and other expenses.

The Administration believes that, where a veteran has no dependents and is being maintained at government expense on a long-term basis, gratuitous, need-based benefits should not be allowed to merely increase an estate to be inherited by collateral heirs. Accordingly, the Administration does not support an outright abolition of the pension-reduction provision.

However, if hardship and unnecessary institutionalization are to be avoided, reductions should be reserved for veterans who receive extended care from the VA and who thus can be presumed not to be returning to the community in the immediately foreseeable future. With the increasing emphasis on decreasing the duration of hospital stays, we believe few veterans would be affected by a reduction which did not occur until eight months following admission. Those veterans whose benefits continued would not be in danger of losing their homes so that it would be easier for the hospitals to place them back in the community. The bill provides that the reduction will not go into effect for those who are being rehabilitated and whose discharge is imminent. This provision would prevent unnecessary disruption of benefits and allow for better predischarge planning.

VA estimates the cost of raising the monthly maximum payment, as provided for in section 112, to be $2,200,000 in fiscal year 1990, with a five-year cost of $11.0 million for fiscal years 1990 through 1994. The annual cost was estimated by multiplying the monthly increase ($45) by the estimated number of affected individuals (4,000) and the number of months in the year. VA estimates the annual cost of extending the period before reduction takes place to be less than $1 million, since most veterans receiving long-term care are in nursing homes and domiciliary facilities rather than hospitals.

Limited Extension of Veterans' Readjustment Appointment Authority

Section 113 would extend, through December 31, 1991, the Veterans' Readjustment Appointment (VRA) authority for Vietnam-era veterans who have a service-connected disability or who served in the Vietnam theater of operations.

The VRA authority has been a great success in providing improved employment opportunities for disadvantaged Vietnam era veterans. It allows Federal agencies to hire these veterans without competition on Civil Service examinations and subsequently to convert them to career or career-conditional appointments after two years of satisfactory employment and training.

VA strongly supports the extension of this authority. This authority has led to the permanent employment of many disabled and Vietnam-era veterans who, once provided the opportunity, have proved to be high-quality employees. VA has been one of the leading users of this authority. During Fiscal Year 1988, VA made over 3,100 VRA appointments. Use of veterans' readjustment appointments has also helped VA meet its affirmative action goals. The extension of this authority would, if passed, allow the Department and other Federal agencies to reach many Vietnam veterans and disabled veterans who need only the opportunity to prove their ability to overcome the employment barriers which remain, even years after the conclusion of the Vietnam era.

Extending the authority for readjustment appointments can aid veterans in completing their readjustment. It is expected that the extension of this authority would have no budgetary impact on the Department.

We believe the targeted approach of Section 113 is preferable to the needlessly broad extension of the VRA program proposed in H.R. 2486. We join with OPM in believing that Section 113 would help the veterans who most need help without diluting their preference among all other veterans.

Multiyear Procurement

Section 121 would expand the Department's multiyear procurement authority in 38 U.S.C. § 114. Currently, VA is authorized to acquire supplies and services by use of multiyear contracting methods solely for use in its health-care facilities. If enacted, this limitation would be eliminated, and all VA activities would be authorized to use this contracting method.

The Administration, which proposed this authority last year (S. 2036), strongly supports section 121. We believe that there is no valid reason to restrict multiyear contracting authority to products and services for use at health-care facilities. Enactment of the proposal would allow multiyear contracting in the acquisition of headstones and markers by the National Cemetery System and of automatic data processing equipment and software by the Office of Acquisition and Materiel Management. These contracts often require significant start-up costs, both in terms of capital outlays and personnel resource commitments. Multiyear contracting would allow contractors to equitably amortize these investments over an extended period of time. The expected result would be increased competition and better pricing.

Also, if multiyear contracting authority is granted to all civilian agencies, significant costs to the Government would be avoided. Multiyear contracting would lower acquisition prices, reduce administrative costs, and enhance the quality of vendor performance.

We are unable to provide cost estimates for this proposal as any projection of savings would be purely speculative. However, we do not expect this proposal to result in any additional administrative costs because both the VA Acquisition Regulations and an acquisition circular currently provide necessary guidance in the use of multiyear contracts and would be readily adaptable beyond health-care facility acquisitions.

HEALTH CARE

Priority Care for Combat Veterans with PTSD

Section 201 of the bill would add a new subsection to 38 U.S.C. § 602, directing VA to furnish priority care to all veterans who served in a "theater" of combat operations who seek care for service-related post-traumatic stress disorder (PTSD). To receive this priority, a "mental health professional" designated by the Chief Medical Director must make a diagnosis of PTSD and determine that it is related to combat-theater service. The measure would require VA to furnish care for PTSD on a priority basis as if the disorder had been formally adjudicated as service-connected, even though a formal adjudication of service-connection would not be required. VA opposes the measure.

VA has the greatest compassion for those veterans suffering from PTSD as a result of service. In the few years since PTSD has become a widely recognized disorder, the Department has significantly expanded the availability of care to those who are suffering from it. Various witnesses at your Committee's July 14, 1988, oversight hearing on PTSD detailed the wide array of PTSD treatment modalities available in the VA system. VA will continue in its efforts to expand programs for PTSD and to provide all necessary care for that disorder.

We oppose, however, the assignment of statutory priorities on the basis of particular diagnoses. Enacting this measure means in many cases decreasing other nonservice-connected veterans' access to care, apparently without regard to the relative need for that care. If PTSD treatment requires a greater priority in the VA, the Department should have the opportunity to devise ways of meeting this need within the total health care system, without legislative directive.

Further, we object to this section because it would treat veterans as service-connected when, formally, they have not been so adjudicated. The adjudication process--to be bypassed under the bill--is not a mere formality. It is the long-standing system under which veterans establish their eligibility for benefits. It is a system based on the requirements of due process and of giving the benefit of the doubt to the claimant. It includes the VA's right and duty to develop evidence.

In contrast, establishing "service-relatedness" under the bill will, as a practical matter, be based on the patient's history as presented by the patient. This bill would require the patient's care provider to be both adjudicator and clinician, an untenable combination. Moreover, that conflict in roles would be aggravated by the fact that the physician's finding of service-relatedness in the case of a patient deemed to have PTSD may "disenfranchise" other nonservice-connected veterans with other medical needs.

We recognize that this situation may seem similar to the special priority given to certain veterans exposed to Agent Orange or ionizing radiation. Under 38 U.S.C. § 610(a)(1)(G), exposure to those agents entitles veterans to priority care for any disability, despite the fact that there is insufficient evidence to associate the disability with the exposure, i.e., insufficient evidence to permit an adjudication of service connection. However, that priority was based on the difficulty of ever establishing service connection based on such exposure because of the state of scientific knowledge in those areas. PTSD, on the other hand, is itself a disability that is regularly service connected and regularly results in the award of compensation and priority medical treatment through the normal adjudication process. Indeed, some 56 percent of claims for service connection of PTSD are granted.

We ask that the Committee forbear from enacting a provision which offers no assurance that it will indeed fulfill its "promise" and which may well be a disservice to chronically mentally-ill veterans and other veterans who could lose access to VA care as the Department attempts to meet a proposed new mandate.

We estimate that, as a result of this section, approximately 16,000 nonservice-connected veterans per year would receive mandatory inpatient and outpatient treatment. The additional annual cost of outpatient treatment, at $465.10 per veteran, would be approximately $7.3 million. For inpatient treatment, at this point we would make funds available to support 49 additional FTEE (7 per medical region) to enhance the treatment capabilities of one specialized PTSD unit in each region, at a total cost of approximately $2.3 million. We would also establish 30 additional PTSD Clinical teams at selected medical centers, each requiring four FTEE, at a cost of approximately $6.4 million, plus a non-recurring activation cost in FY 1990 of $1 million. Thus, the FY 1990 cost of this proposal would be approximately $17 million. We estimate the five-year cost to be $82 million. Because no funding is provided to implement this provision, health care for other nonservice-connected veterans will have to be curtailed throughout the system in an equal amount.

Special Committee on PTSD

Section 202 calls for the Special Committee on PTSD established in accordance with Public Law 98-528 to provide three reports on PTSD to the Secretary and to the Veterans' Affairs Committees of Congress. One report would evaluate the results of a previous VA study on the prevalence and incidence of PTSD among Vietnam veterans. The others would update previous VA reports on VA's capability to treat veterans with PTSD. This section would also require the Secretary to submit comments on these reports to the congressional committees.

We see no need for this legislation.

Public Law 98-528 does not require VA to disband this committee. And in view of the Special Committee's expertise and long involvement in this area, we intend to continue to benefit from its insight and recommendations. However, the proposed reporting requirements, which would direct the Special Committee to report concurrently to the Secretary of Veterans Affairs and the Senate and House Veterans' Affairs Committees, with the Department's comments submitted at a later date, are problematic from both a constitutional and a policy standpoint. It is our understanding that the Department of Justice has provided a report on S. 13 which discusses what appear to be constitutional infirmities in this reporting scheme. In addition, the reporting requirement would also seem to defeat the very benefits the committee is established to provide: to advise Department officials in a manner permitting the formulation of changes in VA policy (as part of the budget process, for example). At the same time, it would have the effect of eroding the Secretary's authority. We strongly oppose this provision.

We estimate that the cost of section 202--for personnel, travel expenses and ADP support--would be $204,000 in Fiscal Year 1990, with a total cost of $644,000 over the life of the program.

Psychological Study of Certain Ethnic Groups

Section 203 would direct VA to conduct a study of the prevalence and incidence of post-traumatic stress disorder (PTSD) and other psychological problems among Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific Islander (including American Samoan Native), and Alaska Native Vietnam veterans and of the effects of those problems on these veterans. The bill would require that particular attention be given to women veterans and veterans with service-connected disabilities. The bill requires that a report containing the results of the study be submitted to the Veterans' Affairs Committees of Congress by October 1, 1991. VA opposes this provision.

The recently-completed National Vietnam Veterans Readjustment Study (NVVRS) has given VA much insight regarding the prevalence and incidence of PTSD and other psychological problems resulting from service in Vietnam. That study included Native-American veterans in its samples and provides valuable new information. We believe it would not be cost-effective to conduct a similar study focused solely on a particular subgroup or particular subgroups.

Special sampling techniques were used in the NVVRS to gain information on specific cultural and racial groups, e.g., Blacks, Hispanics, women, and the disabled. While the proposed study could yield some new data, the recent study provides a sufficient basis from which one can extrapolate to other groups of veterans, such as Native Americans.

Based on what VA has already learned about the incidence and prevalence of PTSD, we do not believe that the proposed study is needed to assist VA in responding to these veterans' clinical needs. Weighed against competing demands for such funding, the proposed study would not be a cost-effective undertaking.

VA also anticipates difficulties in using special sampling techniques to determine the prevalence and incidence of psychological disorders among subgroups of women and disabled veterans in the larger groupings of Native-American veterans specified in this legislation. The populations of those subgroups are so small that obtaining an adequate sample size to gain valid data may not be possible. Finally, designing and conducting the proposed study and reporting its results to Congress by October 1, 1991, would be very difficult and may well increase the cost of such an undertaking.

Based on NVVRS costs, the use of various NVVRS training procedures, instrumentation and software to avoid duplication, and a sample of 1,250 male Vietnam veteran subjects and 920 male controls, we estimate section 203 would cost approximately $583,000 in FY 1990, with a total cost of approximately $1.7 million.

PTSD Programs Funding

Section 204 would require VA to submit to Congress, in conjunction with budget submissions for each fiscal year, amounts estimated to be obligated for various items related to PTSD compensation, treatment, education, and research. These items would include payment of disability compensation for PTSD; the treatment of veterans for PTSD by or at VA's expense; PTSD education, training, and research at various facilities; and the operation of the National Center on PTSD. VA opposes this provision as unworkable, not cost-effective, and an unnecessary diversion of resources.

While we do not dispute that the information sought may be interesting, VA's existing data base and reporting mechanisms will be unable to provide much of this data without significant revisions. To implement these revisions would require that resources be diverted from other, more patient-care and benefit-oriented activities.

In the first instance, we do not believe that VA can realistically estimate the amounts to be obligated for the payment of compensation for PTSD.

The purpose of compensation is to indemnify veterans for the loss of earning capacity caused by service connected disabilities. Evaluations range from 10% to 100% for each disability. Where a veteran has more than one service-connected disability, the rate of compensation payable is based on the "combined" degree of disability determined in accordance with the rating schedule's combined-rating table found at 38 C.F.R. § 4.25. The combined-rating table does not add the percentage of individual disabilities, but rather computes the overall degree of disability by considering the efficiency of the individual as affected first by the most disabling condition, then by the less disabling conditions in the order of severity. Thus, if a veteran has two disabilities, one rated 50% disabling and the other rated 30% disabling, he or she does not have a combined evaluation of 80%, but rather has a 70% combined evaluation. (The 50% is subtracted from 100%, 30% is multiplied by the remaining 50% to give 15%, which is then added to the more disabling 50% condition for a combined evaluation of 65%, which is then raised to 70% since all final percentages must be multiples of 10.) The rate payable is the rate for the 70% combined disability, plus additional compensation which may be payable for dependents. In some cases, compensation may also be payable for certain specific disabilities such as amputations (special monthly compensation).

In the above example, if the 50% disability were PTSD, there is no way to determine what portion of the 70% rate is payable based on PTSD, even on a case-by-case basis, unless a percentage of the total payment is arbitrarily allocated to the PTSD. Realistic estimates would be impossible.

Because section 204 would require VA to artificially manufacture fiscal statistics which bear little relationship to the actual basis of the compensation being paid, the Administration cannot support this provision.

The medical data provisions also present serious difficulties. While it might be possible to extract cost information about Specialized Inpatient PTSD units (e.g., from the RCS 0141 report), it is not certain that this can be done or at what cost. Information about the cost of treating PTSD patients on general psychiatry units or under fee-basis or contract care provision would be even more difficult to derive. On the other hand, budgetary information on the

National Center for PTSD, on projected educational programs, and on PTSD research activities should be readily available. Given the planned changes in administration of the new PTSD Clinical Team, which will supplant PTSD Treatment Teams in FY 1989, reporting on the portion of the budget allotted to them should also be possible.

VA also objects to this provision from a philosophical point of view. Separate diagnosis-related budgeting and reporting would emphasize care focused solely on a particular disorder instead of care for the whole patient. VA operates a comprehensive health care system for the care of veterans, not for individual disabilities. We do not favor budgeting by diagnosis, which is, we believe, inconsistent with the objectives of our programs.

The additional costs associated with section 204 cannot be accurately estimated.

Procreation Services

Section 211 would amend 38 U.S.C. § 612 to authorize VA to furnish outpatient medical services to service-connected veterans and their spouses to assist them in overcoming the effects of service-connected disabilities which prevent or impair their ability to conceive a child. VA does not support enactment of this provision.

Several years ago, the issue of whether VA should furnish such services as artificial insemination or in vitro fertilization arose among women veterans whose service-connected disabilities prevented them from conceiving. VA provision of various reproductive services has also been an issue among male veterans with spinal-cord injuries. In recent years, VA's views have been sought several times on proposals to grant statutory authority to provide such services. The Department has consistently stated that furnishing reproductive services such as in vitro fertilization or artificial insemination would raise profoundly difficult philosophical, practical, and perhaps legal questions on which there is no societal consensus. It remains our view that VA should not become enmeshed in these matters.

The issue raised by such legislation is not simply whether veterans might benefit from such a service. (Indeed, wide variation in success rates among clinics offering these services leave even that question open.) Provisions like this raise more far-reaching and troublesome questions. Thus, for example, they raise the question of how the Department should respond to requests for services from couples likely to produce a severely-retarded child, or who have a history of abusive behavior, or who have a severe psychiatric disability. They also raise issues such as the number of times VA should provide services if the eligible couple fails to conceive and whether services should be provided to help the couple conceive a second or third or more times. This legislation does not address these difficult questions. Nevertheless, if it were enacted and VA attempted to implement it, that undertaking would necessarily enmesh the Department in regulating access to reproductive technology. In short, VA would have to establish rules on matters which many have heretofore believed were not matters for governmental involvement.

VA estimates that there are approximately 10,000 male and 250 female veterans potentially eligible for reproductive therapy. The male veterans consist of those with spinal cord injuries; we assume that approximately 200 new such cases would be added each year. We estimate that 5 percent of the 10,000 males and 10 percent of new cases would request this service, while 10-15 females per year would do so. We assume that all female services would be provided on a fee basis and that male services could be provided either in-house or on a fee basis. If all male procedures were performed in-house, we estimate that implementation of section 211 for males and females would cost approximately $354,000 (including start-up costs) in Fiscal Year 1989, and $1.5 million for fiscal years 1990-94. If all male procedures were done on a fee basis, the Fiscal Year 1989 cost would be $258,000, and the Fiscal Year 1990-94 cost would be $1.8 million.

Compensated Work-Therapy Program

Section 212 would amend 38 U.S.C. § 618(b)(1) to broaden VA's authority to obtain therapeutic work for patients participating in compensated work-therapy (CWT) programs. Under current law, VA may contract with non-Federal entities (primarily private profitmaking businesses) to obtain therapeutic work projects for CWT participants. Section 212 would expand that authority and permit similar arrangements with VA facilities and Federal entities to provide therapeutic work for patients in the program. VA supports this provision.

Pursuant to 38 U.S.C. § 618(b)(1), enacted in 1976, VA operates CWT programs in medical centers throughout the nation. It is a proven cost-effective method of rehabilitation. Under the program, VA contracts with businesses in the community to permit patients, as part of their medical rehabilitation, to perform work for the businesses. This work may involve producing goods or providing services.

Work is usually performed at the medical center, but may take place in another work setting. Businesses pay VA for the work performed under the contract, and those funds are deposited in the Special Therapeutic and Rehabilitation Activities Fund (STRAF), a revolving fund authorized by 38 U.S.C. § 618(c). VA, using funds in the STRAF, pays patients for their work at rates consistent with the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.

Just as patients' rehabilitation may be advanced through performing work for the businesses, opportunities for beneficial therapeutic work for patients also exist within the VA itself and in other Federal entities. Existing authority now limits CWT contractual arrangements, however, to sources "outside the Veterans' Administration." 38 U.S.C. § 618(b)(1). This proposal would amend section 618 to permit arrangements, contractual or otherwise, with any appropriate source of work including VA and other Federal facilities. Enactment would permit new opportunities for growth in this valuable rehabilitation program. VA favors this proposal which, if enacted, would result in no new costs to VA.

This measure would also amend section 618 to clarify that funds in the STRAF may also be used to pay travel expenses to train VA employees to administer CWT services. While we do not envision that this measure would alter the primary purpose of the STRAF, its enactment would assist in the development of a well-trained clinical staff for CWT programs, thus enhancing their effectiveness. VA thus favors this proposal.

State Home Construction Grants

Section 213 would authorize appropriations for the State home grant program for three years, through September 30, 1992. The State home grant program provides grant support to States to assist in the construction or acquisition of State home facilities for veterans. Over the years, these grants have created a network of 58 State veterans' facilities in 36 States. These facilities make it possible to provide medical care to many more veterans than can receive care in VA facilities. It is a cost-effective program in which Federal participation is limited to no more than 65 percent of the cost of any one project.

Extension of this grant program would result in estimated costs of $42 million for Fiscal Year 1990, and $126 million for the three years the program would be extended. VA supports this worthy program, but recommends that it be extended for five years rather than three years. Accordingly, we recommend that the Committee revise this provision consistent with our own legislative proposal, S.748, which you introduced at our request on April 11, 1989.

Assistive-Animals Pilot Program

Section 214 would require VA to establish and conduct during Fiscal Years 1990 through 1993 a pilot program under which the Department would provide assistive monkeys and dogs to certain quadriplegic veterans. This provision would require VA to provide simians to 20 quadriplegic veterans who have service-connected disabilities rated 50 percent or more disabling. VA would also assist 20 other quadriplegic veterans in obtaining monkeys, but the Department would not actually pay for the animals. The provision would also require VA to provide assistive dogs to 10 veterans who have service-connected disabilities rated 50 percent or more. VA would be required to evaluate the pilot program and report to the Congress on the evaluation.

VA is deeply committed to providing all medical and rehabilitative services needed by service-connected spinal-cord-injured veterans, and we are pleased to have financially supported research in the use of simians for assisting these catastrophically disabled persons. This research has sought to demonstrate how trained monkeys may be used as assistive aides to overcome some of the severe problems faced by quadriplegic veterans. The research project is currently being reviewed to determine the potential benefit such aides would provide veteran patients and to estimate potential interest of veterans in these monkeys. Accordingly, we must defer taking a position on this legislation until this evaluation is completed.

We do not support that portion of section 214 which would require VA to provide assistive dogs to quadriplegic veterans. Such a dog would be of limited use to the quadriplegic veteran because of the severe limitations of the veteran and the limited assistance provided by the dog. For example, most quadriplegic veterans would not be able to attach the dog to a wheelchair to pull it or receive objects retrieved by the dog.

VA assumes that monkeys will cost $21,000 each, plus veterinary costs of $250 per year. We assume that signal dogs cost $125 each. However, significant additional costs for veterinary services, shipping, and travel and lodging in connection with training result in a first year cost per dog of $4,325. Based on these figures, we estimate section 214 would cost $162,000 in Fiscal Year 1990, with a total cost of $476,000 through FY 1993.

Pilot Program for Providing Signal Dogs

Section 215 would require VA to establish a pilot program to furnish signal dogs to not more than 20 veterans with service-connected hearing impairments. This pilot program would only be required if VA determines that it does not have legal authority to provide these dogs.

We question whether this pilot program is necessary or useful. Signal dogs are specially trained to attract the attention of deaf individuals. They are rarely used because many mechanical and electrical devices are available for the same purpose, e.g., flashing lights on phones and doorbells, fans and bright lights on alarm clocks, hearing aids, and other electrical amplification signaling devices. Signal dogs are only useful to profoundly deaf veterans in rare circumstances. We thus oppose this section.

VA assumes that each signal dog would cost $125; there are, however, significant additional costs for veterinary services, shipping, and travel and lodging costs in connection with training. Consequently, we estimate the FY 1990 cost of this program to be $17,000, with a total cost (FY 1990-92) of $54,000.

Security Services

Section 221(a) of the bill would assign the functional and technical supervision of the performance of security and law enforcement functions to the Assistant Secretary assigned management, productivity, and logistic support functions. Currently, these responsibilities are administratively assigned to the Veterans Health Services and Research Administration (VHS&RA). Section 221(a) would thus clearly require a departure from the way VA's security program is now operated. We oppose this provision.

Initially, we direct the Committee's attention to the role that the VA's police play in its health care program. The principal responsibility of VA police has historically been to protect patients, employees, visitors, and property at VA health centers. In addition to their protective role, VA police also have the equally demanding responsibility of enforcing federal laws on property under the jurisdiction of VA.

Given the nature of VA's patient population, who often have suffered not only the physical but also the mental ravages of war, VA police must have and display a sensitivity to the needs of those they must protect, and perhaps restrain, which other Federal police forces do not. It is precisely because of that responsibility that VA police are a vital part of patient care, and have been invaluable in quelling disturbances and resolving episodes of disorderly or assaultive conduct with understanding and restraint.

21.

Honorable Alan Cranston

Because of the need to temper their protective responsibility at VA health care facilities with sensitivity to patients and their families, VA police have been administratively placed under the authority of the VA element responsible for operating its health care system, VHS&RA.

We are aware of problems in the operation of the VA police force which, unfortunately, have diverted attention from the very real benefits that the VA police force has provided at many VA facilities. We believe, however, that the answer to these problems is not to realign the responsibility for the security function. Rather, we believe the answer is to make a renewed commitment to assure that, within the context of VA's current organizational structure, every effort is made to assure the proper functioning of a properly educated and trained police force.

This commitment extends to continuing our efforts to upgrade the job classification for VA police officers. VA has long believed that VA police functions warrant a job classification which reflects the nature of their complex and sensitive positions. We will continue to explore the potential for reclassification to achieve that result.

We recognize as well that our commitment to assure the quality of VA's police force must extend to reviewing the need to upgrade the training and technical and professional expertise of VA policemen. VA policemen are currently trained at our facility in Little Rock, Arkansas. In an effort to verify that the training there is sufficient to meet the needs of the VA, we have already reviewed it in some detail. In that review, we had the assistance of outside professionals with expertise in law enforcement. We remain open, as the need for further review becomes apparent, to consulting further with outside experts on the Little Rock program and other aspects of our training.

Our commitment to appropriate training of our police officers extends as well to our determination to provide continuing training to supplement and enhance the technical and professional requirements now demanded of them. Many professionals continue to receive training to enhance their skills even after they have reached a minimum level of competence in their fields. We believe VA policemen, like other professionals, should also continue to receive training to assure that their skills, as professionals, will not diminish, but be enhanced. In reviewing the training program at Little Rock, we intend to consider whether and how such additional training, and recertification if necessary, may best be accomplished.

In recognizing the need for a new commitment of attention and resources to the effective functioning of VA's police force, we believe the installation of new central office management for the program presents an ideal opportunity to give effect to the commitment that we are making through these and other initiatives.

Clearly, new management for the security service in VHS&RA faces a task that will require the unqualified support of the Department. But we believe that support will be provided without altering the structure which has evolved over the course of VA's history to meet the precise needs of the veterans the Department is charged with serving. Moreover, we generally oppose the assignment by statute of particular management functions within the Department. Consequently, we believe section 221(a) is not warranted, and we oppose its enactment.

Section 221(b) of S. 13 would require VA to provide the Congressional Veterans' Affairs Committees with a report containing: (1) the Secretary's plan for improving the training, recruitment, and pay of VA security and law enforcement personnel, and (2) the Secretary's assessment of the need for establishing a policy on the issuance of weapons (firearms) in certain high crime areas and the advisability of reducing VA police services at some VA facilities in order to increase those services at VA facilities with significant security problems. VA does not object to this provision. We also understand that the Department of Justice will be providing you with a report on this provision, recommending a minor modification in the bill to assure that VA consults with the Attorney General on development of any regulations which may be recommended in this report. We have no objection to such a requirement which is consistent with the consultant relationship we have had over the years.

In summary, Mr. Chairman, we are committed to doing whatever is necessary to make the VA police force a thoroughly professional and properly trained component of the VHS&RA. That commitment does not require the legislative change which section 221 of S. 13 has proposed. Accordingly, we cannot support that proposal. We have, however, no objection to the reporting requirements of section 221(b) of the same bill.

If enacted, section 221 would result in no significant new costs to VA.

Sharing Specialized Medical Resources

Section 222 would authorize a number of amendments to 38 U.S.C. § 5053 to expand VA's authority to share "specialized medical resources" with certain health-care providers and research and educational facilities. These changes would enable VA outpatient clinics to enter into such agreements. In addition, VA health-care facilities would be authorized to enter into such agreements with such institutions as research centers and nursing homes. The amendments would also delete a provision limiting sharing to the same medical community, a term which is not defined in existing law. The bill also would provide greater flexibility to VA facility directors in setting prices for resources provided. Finally, the bill would make clear that all reimbursements to VA must be allotted to the VA facility that furnished the resources. These changes are likely to result in better utilization of specialized medical resources.

We favor the enactment of this provision. If enacted, it would not result in any new costs to VA.

Collective Bargaining--Title 38 Employees

Section 223 would require the Secretary to apply the provisions of chapter 71 of title 5 of the United States Code with respect to the conditions of employment for "title 38 employees," i.e., VA health-care professionals.

Current law, 38 U.S.C. § 4108, reserves to the Secretary the authority to prescribe conditions of employment for such employees. Particularly with respect to clinical and professional matters directly affecting the quality of the health care being delivered in VA medical facilities, the Department has sought to preserve the traditional medical peer-review process for managing health-care professionals' conditions of employment.

Peer review, a hallmark of the independent title 38 employment system Congress established to enable VA to ensure competence among its professional staff, continues to be an essential element of effective health-care delivery. It is, however, inconsistent with significant aspects of the collective bargaining requirements contained in the title 5 provisions mandated by section 223. VA has been so strongly committed to the peer-review principle that, over the past 15 years, it has litigated aggressively to resist collective bargaining proposals inconsistent with it. This litigation, with strong Department of Justice support, culminated in the July 1988 decision in Colorado Nurses Association v. FLRA, 851 F.2d 1486 (D.C. Cir. 1988), and related cases. Section 223 is inconsistent with the principles we defended in that litigation. We strongly oppose any legislation which would effectively overrule the Colorado Nurses decision.

Disciplinary Reform/Grievance Procedure -- Professional Employees

Section 224 would eliminate the current requirement that a disciplinary board be convened where management, with respect to a "title 38" health care professional employee, proposes a so-called "lesser" disciplinary action, i.e., suspension for 14 days or less, reassignment without reduction in basic pay, reduction in rank without a reduction in basic pay, reprimand, or admonishment. For these actions, the section would substitute a due process system, including either arbitration or an agency review procedure, depending on the bargaining unit status of the affected employee. Section 224 would also require that the Secretary authorize arbitration of grievances for employees in bargaining units.

VA's disciplinary procedures do need streamlining. We need better procedures for situations involving "lesser" disciplinary actions. We do not believe, however, that section 224 is the right approach. First, it would be inconsistent with our longstanding position that disciplinary matters affecting title 38 employees are not appropriate subjects for grievance arbitration. Second, we do not believe grievances over more general working conditions--including issues involving clinical and/or professional matters--should, consistent with our position in the Colorado Nurses case, be subjects for negotiated grievance procedures.

As an alternative, we recommend the approach taken in S. 1136, which you introduced at our request in the 100th Congress. That approach would limit the use of the disciplinary board machinery to cases where the proposed penalties are most serious: removal, suspension of more than 14 days, or demotions involving loss of grade or basic pay. All lesser disciplinary actions would be excluded. Administrative appeal or grievance procedures would be established for these latter actions under regulations prescribed by the Secretary pursuant to current authority. As a result, the volume of section 4110 disciplinary actions would be reduced. Moreover, lesser disciplinary actions would be less costly and cumbersome and therefore more readily invoked. That would make progressive discipline more feasible and allow preservation of management prerogatives.

Veterans' Benefit Laws Inconsistencies

Section 225 would require VA to establish a task force to identify inconsistencies and make recommendations for legislation concerning VA's authorities to provide prosthetic services. These authorities have been added and modified over the years as Congress expanded veterans' eligibility for health-care benefits. The changes were made incrementally so that some degree of inconsistency and duplication exists.

The proposed task force would be required to submit a report to the Secretary identifying these inconsistencies and making recommendations for eliminating them. The Secretary would then be required to submit to Congress the report and a report containing legislation to eliminate the inconsistencies identified by the task force.

The Department of Justice has constitutional objections to this provision. We would support this provision if those objections could be cured. We believe that the Secretary should, after reviewing the task force's report, submit a report to Congress on the inconsistencies and state what steps, legislative or otherwise, the VA would take to eliminate the inconsistencies. Requiring a report to Congress containing legislation is unnecessary.

If enacted, section 225 would not impose any new cost on VA.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 13 to the Congress.

Sincerely yours,

Edward J. Derwinski

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUL 12 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

I am pleased to respond to the request for the views of the Department of Veterans Affairs (VA) on S. 564, 101st Congress, a bill "[t]o provide for an Assistant Secretary of Veterans Affairs to be responsible for monitoring and promoting the access of members of minority groups, including women, to services and benefits furnished by the Department of Veterans Affairs."

This bill would amend Public Law 100-527 by adding an additional function to those already listed in Section 4 of that law for an Assistant Secretary. The new function provided by the bill would require the review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans and the development and implementation of policies facilitating access of such veterans to services and benefits provided under laws administered by the Department.

The Department generally views favorably legislation which would assist minority veterans; however, we oppose the proposed legislation as it is too specialized and would restrict the Secretary's authority to place responsibility for implementation of policies with those agencies normally responsible for carrying out this mission. Further, we believe it would essentially duplicate a provision of Public Law 100-527 which currently makes the Assistant Secretaries responsible for equal opportunity functions. The activities contemplated by the proposed bill, in our view, have already been incorporated in the structure set up by the Department to comply with the provisions of Public Law 100-527 regarding equal opportunity functions.

At the present time, many of the groups addressed by the proposed legislation are receiving assistance through outreach efforts and specific programs initiated by the VA through the Veterans Benefits Administration (VBA). In addition, veterans advisory boards composed of government and private sector members evaluate local needs and initiate support programs specific to each part of the Country.

Outreach efforts have been made a part of VBA activities through special VBA manual provisions. The programs are numerous. For example, to assist the female veteran, lists of female veterans are maintained and mass mailings go out to female veterans regarding benefits available to them. Women veterans organizations have been identified and rosters are maintained of the primary contacts. Liaison with these groups has been established and speakers are provided to them upon request for their meetings and special events.

Joint Committees consisting of officials from Veterans Benefits Administration and Veterans Health Services and Research Administration (VHS&RA) currently meet for purposes of setting up outreach programs to define areas of Native American population and problems of native American veterans in these areas. As a result, states with substantial native American populations, such as Arizona, Oklahoma and Alaska, already have special programs for native Americans. In these states, a number of outreach efforts have been developed to seek out these veterans and to inform them of the benefits available to them.

For the Spanish speaking veterans or beneficiaries, pamphlets and papers written in Spanish are already an integral part of outreach efforts and notification procedures where required. The VBA also has outreach programs geared to assist the homeless. This results in direct contact with all minority groups listed in the proposed legislation. Outreach efforts involve working with shelters and other community service providers in various areas of the Country.

In the area of education, the Department monitors through the Veterans Benefits Administration, the education programs administered by the VA to assure compliance with equal opportunity mandates. Prior to approval of any education program, compliance with equal opportunity laws is confirmed. Failure by institutions to comply results in withholding of the required approval necessary to permit the release of education benefits. Periodic compliance reviews are conducted at proprietary schools to insure continued compliance, and complaints of discrimination are investigated. As the result of an agreement between the VA and the Department of Education (ED), compliance activities in institutions of higher learning are monitored by ED.

For the educationally disadvantaged, e.g., those veterans who have not finished high school, special note is made at the time of discharge from service and they are furnished pertinent information at that time. In addition, their names are forwarded to the local VA regional offices and these veterans are contacted as a follow-up for purposes of providing counseling with respect to GED programs and benefits available to them.

Public Law 100-527 establishes equal opportunity as one of the functions of the Assistant Secretaries. This function would serve as a natural umbrella for the provisions included in the bill. It would seem unnecessary to establish a function which would overlap or duplicate the duties already mandated by law for the Assistant Secretaries. Limited resources would demand that the Department's efforts not be duplicated wherever possible.

In that regard, it is noted that the bill limits the definition of minority veterans to only a portion of those persons who have been included in the protected classes named in 38 C.F.R. Parts 18 and 21. The bill's definition only extends such status to veterans based on race, national origin and being female. There is no provision for the handicapped or aging veteran. This makes the legislation even more specialized and impractical.

S. 564 provides for the "implementation of policies" by the Assistant Secretary. The various agencies of the Department, such as the Veterans Benefits Administration, the Veterans Health Services and Research Administration and National Cemetery Service (NCS) are and should be responsible for the implementation of the policies of the Department. To assign to Assistant Secretaries the role of implementing policy also assigned to the various agencies would result in dual responsibility or an unnecessary duplication of effort. It is therefore recommended that "implementation of policies" be deleted from the bill as a part of the proposed function of the Assistant Secretaries.

It is estimated that the cost for implementing this bill in any fiscal year would be minimal.

The Department is committed to making benefits and services available to all veterans regardless of race, creed, national origin, sex, or age. We are cognizant of the problems of those veterans who may be disadvantaged due to no fault of their own and many programs have been initiated to assist them. We are in favor of legislation which would offer assistance to these veterans; however, legislative action which would duplicate current mandates and place special emphasis on a very limited category of veterans may have the effect of hampering the Department's ability to direct efforts towards assisting the veteran population as a whole. For these reasons we are unable to support this bill.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of S. 564 to the Congress.

Sincerely yours,

Edward J. Derwinski
Secretary

Office of the
Administrator
of Veterans Affairs

Washington DC 20420

Veterans
Administration

JUN 2 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to respond to your request for the views of the Department of Veterans Affairs (VA) on S. 574, a bill "[t]o amend title 38, United States Code, to improve health care benefits for veterans."

S. 574 contains several provisions related to VA health-care benefits. VA supports some of the provisions of the bill, and opposes others.

ASSISTIVE ANIMALS

Section 4 of the bill would amend 38 U.S.C. § 614 to authorize VA to provide simian aides and assistive dogs to veterans entitled to disability compensation for quadriplegia. It also would authorize payment of travel expenses incurred by the veteran in becoming adjusted to the animal. We oppose this provision.

We have long provided financial support for research which has sought to demonstrate that trained monkeys may assist spinal cord injured persons in carrying out certain tasks. We are nearing conclusion of an evaluation of the research project of M. J. Willard, Ed.D., a project we have helped fund for some time, to determine its potential benefit for veteran patients. Until that determination is made, however, we don't believe it would be appropriate to endorse this provision with respect to simian aides.

We also oppose that aspect of section 4 which authorizes VA to furnish veterans with specially trained dogs. Trained dogs would be of limited use to quadriplegic veterans because of the patients' severe limitations and the limited capacities of the animal. Most quadriplegic veterans would not be able to attach the dog to a wheelchair to pull it, or receive objects retrieved by the dog.

We estimate the cost of section 4 to be some $.54 million in Fiscal Year 1990, and approximately $2.2 million over five fiscal years.

REPEAL OF AUTHORITY TO FURNISH TOBACCO

Section 5 of the bill would repeal section 615 of title 38, which authorizes the Secretary to furnish tobacco to veterans receiving hospital or domiciliary care. That section of law has been in existence for many many years, and predates widespread awareness of the health hazards of smoking. We strongly urge repeal of the section which we do not now use and have not used for many years. In our view, repeal would be symbolic even though it would have no cost impact.

EXTENSION OF RESPITE CARE AUTHORITY

Section 6 would amend 38 U.S.C. § 620B(c) to extend from September 30, 1989 to September 30, 1991, authority for VA's respite care program. It would also extend for one year, the date by which a report on an evaluation of the program must be submitted to the Congress. The two-year extension of authority is the same as section 3 of S. 748, an Administration proposal transmitted to the Congress on March 20, 1989. Our respite care authority allows us to provide chronically ill veterans who reside at home with brief, planned periods of care in VA facilities in order to provide members of the veterans' families with some relief from the physical and emotional rigors of continuous home care. Our experience with the program, which allows veterans to remain at home in the care of their loved ones, and avoid costly and protracted periods of institutional care, appears to be working very well. We support its extension, and urge that you adopt section 3 of S. 748, our proposal for a two-year extension. There is no significant cost to the program.

NONINSTITUTIONAL ALTERNATIVES TO NURSING HOME CARE

Section 7 would add a new section to title 38, to authorize VA to furnish some service-connected veterans with noninstitutional services on a contract basis as an alternative to nursing home care. Veterans eligible for services would be those receiving, or needing nursing home care primarily for treatment of their service-connected disability. The proposal would require VA to furnish the patients with case management services, and to evaluate the program and report findings and conclusions to the Congress by September 30, 1992. We do not support enactment of this proposal which would change the VA's medical mission to one that involves the provision, or simply reimbursement, of nonmedical social support services such as homemaker, chore and personal care services.

3.

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Over the years, we have repeatedly opposed legislative proposals which would have called for VA to furnish nonmedical support services. Although we support noninstitutional health services programs, such as hospital based home care and adult day health care, we have long relied on community resources to provide nonmedical health-related services. Moreover, the types of support services this measure would authorize--homemaker services and personal care services such as assistance with feeding, washing, and dressing--duplicate, in many respects, the assistance for which basic aid and attendance allowances are currently paid to many veterans. Finally, use of health related social services as a substitute for nursing home care has been studied extensively. The services have been found to improve the client's quality of life, but they are not always a substitute for nursing home care.

We estimate that enactment of a pilot program at ten VA medical centers would cost approximately $13.6 million in Fiscal Year 1990, and $68 million over five fiscal years.

PAY ENHANCEMENTS FOR CERTAIN HEALTH-CARE PERSONNEL

Section 8(a) would amend 38 U.S.C. § 4107(f) to provide the Secretary with discretionary authority to enhance the premium pay of nursing assistants if necessary for recruitment and retention. This provision would add nursing assistants to that list of professions to whom the VA may provide enhanced premium pay if it is needed. We do not have system-wide problems recruiting or retaining nursing assistants. However this measure would give VA officials more flexibility when seeking tools to alleviate any problems we do have.

Enhanced premium pay for nursing assistants is but one proposal reviewed by our nurse pay task force which has developed various ideas regarding nurse pay. Those ideas are still being reviewed and fine tuned. We recommend deferring action on section 8(a) until all of our task force's proposals can be fully developed and reviewed, and until proposals can be submitted through the normal legislative process.

Assuming that some 10 percent of all VA nursing assistants would be authorized premium pay under section 8(a), we estimate that the cost of enactment of the section would be approximately $1.4 million in Fiscal Year 1990 and $7.2 million over five fiscal years.

Section 8(b) would expand VA's existing authority to grant exceptions to a required reduction in retired military pay so as to include registered nurses in addition to physicians. Section 5532 of title 5, United States Code, now imposes upon retired officers of the uniformed services, a substantial reduction in their retired pay when appointed to civilian positions in the Federal Government. Under that section, the former officer's retired pay, following appointment, is reduced to an amount equal to $7,698.51 plus half the remainder of his retired pay. (Originally the base figure was $2,000; the statute authorizes an increase keyed to Consumer Price Index increases.) The statute also imposes an overall effective ceiling equivalent to Executive Level V ($75,500), upon the aggregate of retired pay and civilian pay.

Naturally, this reduction makes VA employment less attractive for retired military health care officers. We now have authority in 38 U.S.C. § 4107(i) to authorize exceptions to the statutory loss of pay for well-qualified physicians. Exercised infrequently and, we believe, prudently, the authority has nevertheless been particularly helpful in selectively recruiting highly qualified physicians in a variety of scarce categories. In our view, allowing VA to include retired military nurses would attract many more of these nurses to VA employment when they retire from the uniformed services. This expansion would be particularly helpful in recruiting and retaining nurses at facilities experiencing nursing shortages.

Additionally, we recommend amending the bill to include authority not just for registered nurses, but all occupations providing patient care services or services incident to direct patient care. This will allow more competitive recruiting for retiring military pharmacists, physician assistants, dieticians, therapists, and other shortage category health personnel who now tend to avoid Federal civilian employment. It should be noted that although this provision will not increase VA outlays, it will continue outlays for military retired pay.

The Administration urges that equivalent authority be provided for the Secretary of Defense. To provide the Secretary of Veterans Affairs authority to grant exceptions to the restrictions in section 5532 of title 5, United States Code, while failing to provide reciprocal authority to the Secretary of Defense, will further exacerbate DoD's difficulties in attracting and retaining health care professionals.

VA estimates that the total cost of S. 574 would be approximately $15.8 million in Fiscal Year 1990, and $51.1 million over five fiscal years.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 574 to the Congress.

Sincerely yours,

Edward J. Derwinski
Secretary

COST ESTIMATION WORKSHEET

EGISLATION NUMBER/NAME: S.574, Veterans Health-Care Program Improvements Amendments of 1989

UB-TITLE NUMBER/NAME:

ECTION NUMBER/NAME: 8(a) Premium Pay for Certain Nursing Assistants

. 6-YEAR COST ESTIMATION: (Dollars in Thousands)	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
(a) TOTAL COST (000s):		5,834	5,834	5,834	5,834	5,834	29,170
(b) FTEE:							
(c) DOLLAR AUTHORIZATION SPECIFIED IN BILL (IF ANY) (000s):							
(d) ADD'L APPROPRIATION REQUIRED(000s):		5,834	5,834	5,834	5,834	5,834	29,170
(e) WORKLOAD (Units =):							

I. ASSUMPTIONS & METHODOLOGY OF COST, FTEE, & WORKLOAD PROJECTIONS: Use a COST ESTIMATION (Continuation) WORKSHEET for additional space.

SEE CONTINUATION SHEET

III. NAME OF RESPONSIBLE SERVICE/PROGRAM: Office of Health Care Staff Development and Retention (10BRR) DATE: 3/23/89

STAFF CONTACT PERSON: Betsy Dillard TELEPHONE: 233-5315

Continuation

COST ESTIMATION WORKSHEET

LEGISLATION NUMBER/NAME: S. 574, Veterans Health-Care Program Improvements Amendments of 1989

SECTION NUMBER/NAME: 8(a) Premium Pay for Certain Nursing Assistants

1. Estimate of annual cost for Sunday premium pay for LPNs/NAs: FY 89 Pay Period 5 -

   252,706.76 x 26 pay periods = 6,570,375.76

2. Estimate of Evening Night Differential for LPNs/NAs:

   FY 88 pay period 14 hourly pay out was 2079.81.

   2079.81 x 1.041 (Jan. 1989 pay raise) = 2,165.08

3. Assumptions:

   o As of 12/31/88 - employed 15,004 FT NAs and 10,033 LPNs; 60% of total LPNs/NAs are NAs.

   o Saturday premium pay same as Sunday:

   60% of 6,570,375.76 = $3,942,225 (additional cost - Saturday premium pay for NAs)

   o Evening and night differential - Title 5 pays only the hours between 6 p.m. - 6 a.m. Title 38 pays all hours if majority are between 6 p.m. - 6 a.m. Assume an additional 4 hours each day x 14 days per pay period. Hourly pay out was 2165.08 X 56 (4 additional hours/14 days) = 121,244.48 x 26 = 3,152,356.48.

   60% of 3,152,356.48 = $1,891,414 (additional cost - evening and night differential for NAs)

   TOTAL - $5,833,639

Continuation

COST ESTIMATION WORKSHEET

LEGISLATION NUMBER/NAME: S.574, VETERANS HEALTH - CARE PROGRAM IMPROVEMENTS OF 1989

SECTION NUMBER/NAME: SECTION 4 - ASSISTIVE ANIMALS

3. Initial demand is expected to be greater as the existing population of quadriplegics wanting Companion Dogs is satisfied. However, it is expected that few quadriplegics will want dogs because of the care the animals require. We are estimating that only 50 Companion Dogs will be required. Usage is estimated at 15 dogs per year. Continuing costs are based on 5 dogs per year after the initial demand has been met. The cost for FY 89 is based on providing 5 dogs. This is purely a guess based on when/if the legislation is signed into law.

Cost Estimate - Companion Dogs:

Fiscal Year	Dogs Required	Cost of Dogs	Travel Lodging	Veterinary Services	Total
1989	5	$ 625	$19,000	$1,250 (5)	$ 20,875
1990	15	1875	57,000	5,000 (20)	63,875
1991	15	1875	57,000	8,750 (35)	67,625
1992	15	1875	57,000	12,500 (50)	71,375
1993	5	625	19,000	13,750 (55)	33,375
1994	5	625	19,000	15,000 (60)	34,625
					$291,750

The combined cost for FYs 1989 thru 1994 to provide both Simian Aides and Companion Dogs is $2,373,750.

Continuation

COST ESTIMATION WORKSHEET

EGISLATION NUMBER/NAME: S.574 VETERANS HEALTH - CARE PROGRAM IMPROVEMENTS OF 1989

ECTION NUMBER/NAME: SECTION 4 - ASSISTIVE ANIMALS

5. Initial demand is expected to be greater as the existing population of quadriplegics wanting Simian Aides are satisfied. An estimated usage of 30 aides per full year is being used until the existing population is satisfied. Continuing costs are based on 10 units per year after the initial demand has been met. The cost for FY 1989 is based on providing 10 Simian Aides. This is purely a guess based on when/if the legislation is signed into law.

Cost Estimate - Simian Aides:

Fiscal Year	Simians Required	Cost of Simians	Veterinary Services	Total
1989	10	$160,000	$ 2,500 (10)	$ 162,500
1990	30	480,000	10,000 (40)	490,000
1991	30	480,000	17,500 (70)	497,500
1992	30	480,000	25,000 (100)	505,000
1993	13	208,000	28,250 (113)	236,250
1994	10	160,000	30,750 (123)	190,750
				$2,082,000

The cost estimate to provide companion dogs to service-connected quadriplegic veterans is based upon quick passage of S.574 as introduced. The following factors were considered:

1. Available data from DVB indicates that there are 2,354 veterans receiving compensation for the loss of use of upper and lower extremities (quadriplegics).

2. The cost of the Canine Companion is only $125 because CCI is supported by grants and donations. However, other costs are involved, i.e., travel to California or New York, lodging for two weeks for both the quadriplegic veteran and a care giver, and veterinary services for the dogs. Travel costs for the veteran and attendant are estimated at $1,000; lodging costs are estimated at $200 per day for the veteran and attendant; veterinary services are estimated at $250 per dog per year.

COST ESTIMATION WORKSHEET

GISLATION NUMBER/NAME: S.574, VETERANS HEALTH-CARE PROGRAM IMPROVEMENTS AMENDMENTS OF 1989

B-TITLE NUMBER/NAME:

CTION NUMBER/NAME: SECTION 4 - ASSISTIVE ANIMALS

6-YEAR COST ESTIMATION: (Dollars in Thousands)	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
a) TOTAL COST(000s):	183	554	565	576	270	225	2,373
b) FTEE:	0	0	0	0	0	0	0
(c) DOLLAR AUTHORIZATION SPECIFIED IN BILL (IF ANY)(000s):	0	0	0	0	0	0	0
(d) ADD'L APPROPRIATION REQUIRED(000s):	183	554	565	576	270	225	2,373
(e) WORKLOAD (Units = Simians Aides & Companion Dogs):	15	45	45	45	18	15	183

I. ASSUMPTIONS & METHODOLOGY OF COST, FTEE, & WORKLOAD PROJECTIONS: Use a COST ESTIMATION (Continuation) WORKSHEET for additional space.

he cost estimate to provide Simian Aides to service-connected quadriplegic veterans is based upon quick passage f S.574 as introduced. The following factors were considered:

1. Available data from DVB indicates that there are 2,354 veterans receiving compensation for loss of use of upper and lower extremities.

2. Approximately 100 of these veterans suffer from respiratory paralysis. Dr. Binard, Director, Spinal Cord Injury, is not recommending the use of Simian Aides for these quadriplegics.

3. Of the remaining 2,254 service-connected quadriplegics, it is estimated that only 5% or 113 quadriplegics would want a Simian Aide because of the care the animal requires.

4. The cost estimates provided in previous legislation introduced by Senators Murkowski and Cranston vary significantly, i.e., $11,000 to $21,000 per monkey. The production capability at the lower cost of $11,000 is based on 50 animals per year. This production capability appears questionable. An average cost of $16,000 per animal is being used in the VA cost estimate. Veterinary services are estimated at $250 per year, per animal.

III. NAME OF RESPONSIBLE SERVICE/PROGRAM: PSAS & RR&D DATE: 3/21/89

STAFF CONTACT PERSON: E. NOWAK or PRISCILLA CRAIG TELEPHONE: 2011 or 5177

Office of the Administrator
of Veterans Affairs
Washington, D.C. 20420

MAY 22 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to respond to your request for the views of the Department of Veterans Affairs (VA) on S. 900, a bill "[t]o amend title 38, United States Code, to extend for one year the authorization of the Veterans' Administration to furnish respite care to certain chronically ill veterans and the due date for a report on the results of an evaluation of furnishing such care."

The VA's Deputy Secretary, Mr. Anthony J. Principi, testified on S. 900 at a hearing before the Senate Veterans' Affairs Committee on May 18, 1989. Mr. Principi's written statement submitted to the committee at the hearing constitutes VA's report on the bill. We estimate the cost of continuing the program for one year would be $260,000. Enclosed is a paper showing the assumptions underlying the cost estimate.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 900 to the Congress.

Sincerely yours,

Edward J. Derwinski
Secretary

Enclosure

"America is #1—Thanks to our Veterans"

COST ESTIMATION WORKSHEET

SLATION NUMBER/NAME: S. 900

TITLE NUMBER/NAME: Extension of Respite Care Authority

ION NUMBER/NAME:

	FY89	FY90	FY91	FY92	FY93	FY94	TOTAL
-YEAR COST ESTIMATION: (Dollars in Thousands)							
TOTAL COST(000s):	--	260					260
FTEE:							
DOLLAR AUTHORIZATION SPECIFIED IN BILL (IF ANY)(000s):							
ADD'L APPROPRIATION REQUIRED(000s):	--	260					260
WORKLOAD (Units =):							

ASSUMPTIONS & METHODOLOGY OF COST, FTEE, & WORKLOAD PROJECTIONS: Use a COST ESTIMATION (Continuation) WORKSHEET for additional space.

The projected cost of respite care is based on the assumption that VA medical centers will utilize empty beds for the program. These costs include food at $4.32 per day, pharmacy at $10.89 per day, and laundry at $3.36 per day, for a total of $18.57 per diem. It is assumed that the program will involve 2,000 episodes of care with 7 days as the average length of stay.

2000 x 7 x $18.57

1. NAME OF RESPONSIBLE SERVICE/PROGRAM: Office of Geriatric & Extended Care DATE: 3/15/89

STAFF CONTACT PERSON: Judith E. Mabry TELEPHONE: 233-3692

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

SEP 8 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Department of Veterans Affairs (VA) and our estimate of costs concerning S. 1092, a bill "To amend title 38, United States Code, to implement certain recommendations of the Commission on Veterans' Education Policy for veterans' education policy improvements concerning work-study allowances, institutional reporting fees, and distinctions in degree and nondegree training; and for other purposes."

Mr. R. J. Vogel, Chief Benefits Director, presented a statement of the VA's position on the subject bill when he testified before your Committee on June 9, 1989. As explained in that testimony, while the VA supports certain provisions of this measure and agrees in concept with certain others, we cannot support enactment of the bill as drafted. For your convenience, we are enclosing a copy of Mr. Vogel's prepared statement.

We estimate that sections 2, 3, 5, and 8 of S. 1092, if enacted, would result in insignificant benefit and administrative costs; i.e., less than $1 million and $100,000, respectively. However, sections 4 (chapter 31 reporting fee), 6 (counseling requirement for program changes), and 7 (monthly self-certification) could each result in significant administrative costs; section 7 could also result in significant reductions in overpayments; section 9 (earlier effective date for benefit reduction/termination), insignificant savings; and section 10 (chapter 106 work-study), significant benefit cost.

As you requested, we are enclosing a detailed 5-year cost estimate for the bill together with the assumptions and methodology used in arriving at this estimate.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1092 to the Congress.

Sincerely yours,

Edward J. Derwinski

Enclosures

COST ESTIMATE, S. 1092, 101st Congress

1. This bill proposes to amend title 38, United States Code, to implement certain recommendations of the Commission to Assess Veterans' Education Policy to improve veterans' education policies concerning work-study allowances, institutional reporting fees, and distinctions in degree and nondegree training; and for other purposes.

2. Section 2 of the bill would amend title 38 to allow work-study payments to be based on the higher of the Federal minimum wage or the applicable State minimum wage. At the current time, there are 12 states with a minimum wage higher than the Federal minimum of $3.35 per hour. The range is from $3.65 to $4.25 per hour. It is estimated that paying the higher wage would result in insignificant cost; i.e., additional benefit cost of less than $1 million, and $100,000 in administrative cost in any fiscal year.

3. Section 3 would amend title 38 to allow chapter 35 dependents and survivors to participate in the VA work-study program. Assuming that the participation rate of chapter 35 trainees in the work-study program would be similar to the current participation rate under chapters 31, 32, and 34, it is estimated that the cost would be less than $1 million in benefit cost and $100,000 in administrative cost in any fiscal year.

4. Section 4 of this bill would amend section 1784 of title 38 to include chapter 31 trainees for purposes of payment of a reporting fee to educational institutions. Shown below is the estimated additional administrative cost of including the chapter 31 trainees.

Fiscal Year	Chapter 31 Trainees	Administrative Cost ($000)
1990	22,700	$168.9
1991	23,100	171.9
1992	23,200	172.6
1993	22,900	170.4
1994	22,700	168.9
		$852.7

5. Section 5 of the bill would eliminate the attendance requirement distinctions between degree and nondegree training. The benefit and administrative cost of this proposal would be insignificant; i.e., less than $1 million and $100,000, respectively, in any fiscal year.

6. Section 6 of the proposal would remove the limit on the number of program changes permitted and, instead, would institute

2.

a counseling requirement for a second or subsequent change of program. Shown below is the estimated cost of that provision. It is assumed that the counseling would be done on a contract basis and be paid from the Readjustment Benefits appropriation.

Fiscal Year	Trainees Counseled	Administrative Cost ($000)
1990	9,600	$1,440
1991	10,000	1,500
1992	10,800	1,620
1993	11,600	1,740
1994	12,400	1,860
		$8,160

7. Section 7 of the bill would amend section 1780 of title 38 to provide that all education programs administered by VA may require monthly self-certification verifying pursuit of training for both degree and nondegree students. At the current time, the Vocational Rehabilitation and Education Service is conducting a survey of education overpayments to include the impact that monthly certification would have in reducing overpayments for chapters 32, 34, and 35. At this time, there is insufficient data available to provide a realistic cost estimate of the benefit savings that may be realized as a result of this proposal. However, based on preliminary findings, it can be assumed that the savings for chapters 32 and 35 will be substantial. In addition, there may be significant reductions in overpayments for members of the Selected Reserve training under the provisions of chapter 106 of title 10, United States Code. Any such reductions in chapter 106 overpayments would revert to the Department of Defense. The estimated administrative cost of this proposal is based on the Veterans Benefits Administration's experience in administering the monthly certification requirement for chapter 30. The cost of this provision, shown below, does not reflect the reduced costs of an automated certification processing solution. An automated solution, like the prototype to be implemented in the chapter 30 program in the near future, would reduce personnel costs reflected in the figures below.

Fiscal Year	Staff Years	Administrative Cost ($000)
1990	33	$1,659
1991	31	1,588
1992	30	1,519
1993	28	1,453
1994	27	1,386
		$7,605

8. Section 8 of the bill would include as mitigating circumstances for course withdrawal the necessity for making or changing child care arrangements as a result of difficulties beyond a trainee's control. Since this is consistent with existing VA policy, and since it is assumed that an insignificant number of trainees would be utilizing this provision, the benefit and administrative costs are assumed to be insignificant; i.e., less than $1 million and $100,000, respectively.

9. Section 9 of the bill would amend section 3013 of title 38 to make the effective date of reduction/termination of education benefits for chapters 30, 31, 32, 34, and 35 the date of the change in enrollment. Currently, the effective date for changes in education benefits is the end of the month. We are unable to project the number of trainees who would be impacted by this provision. However, it is assumed that the benefit savings would be less than $1 million.

10. Section 10 of the bill would make persons training under chapter 106 of title 10 eligible for the work-study program. Assuming that the participation rate for a chapter 106 work-study program would be similar to the current participation rate under chapter 34, the estimated number of trainees and additional benefit cost is shown below. The administrative cost of this provision is assumed to be less than $100,000 in any fiscal year.

Fiscal Year	Chapter 106 Trainees	Benefit Cost ($000)
1990	4,800	$4,020
1991	4,800	4,020
1992	4,900	4,104
1993	4,900	4,104
1994	4,900	4,104
		$20,352

METHODOLOGY

a. S. 1092, 101st Congress, 1st Session

b. This bill proposes to amend title 38, United States Code, to implement certain recommendations of the Commission to Assess Veterans' Education Policy for improving veterans' education policies concerning work-study allowances, institutional reporting fees, and distinctions in degree and nondegree training; and for other purposes.

c. Estimated 5-year cost - See Cost Estimate.

d. Employment Requirements - See Cost Estimate.

e. Change in caseload - None.

f. Methodology - Sections 2, 3, 5, and 8 of this bill have insignificant benefit and administrative costs; i.e., less than $1 million and $100,000, respectively.

Section 4 of the bill would include chapter 31 trainees for purposes of payment of the reporting fee under section 1784 of title 38, United States Code. The cost estimate assumes that a reporting fee would be paid for each chapter 31 trainee, and that 89 percent of those fees would be at the $7 rate, and the remaining 11 percent at the $11 rate. The percentages used for determining the $7 and $11 fees were based on 1988 actual experience.

The cost of section 6 of this bill is based on information obtained from the September 1988 AMIS 3011 report. This report indicates that 2.79 percent of the education trainees in 1988 requested a second or subsequent change in their program. This percentage was applied to the 1990 through 1994 projected education caseload to determine the number of trainees who would require counseling as a result of implementation of section 6 of this provision. The estimated number of trainees to be counseled (2.79 percent of the total) was multiplied by $150 (the average fee basis counseling cost). The 1990 chapter 34 trainees were not included in the cost estimate. The chapter 34 program ends December 31, 1989; therefore, it was assumed that an insignificant number of chapter 34 trainees would request a change in training in their final months of training.

Although section 7 would authorize use of monthly certifications under all education benefit programs, it is assumed that the provisions would not be implemented as to the chapter 31 and 34 programs. Under chapter 31, the individualized followup with veterans and the increased capability which will be provided by changes to the Target system should improve the capability to monitor payment procedure, making monthly certification for those trainees unnecessary. The chapter 34 program ends December 31, 1989, and it is believed that a monthly certification process would not be fully operational by that time. Therefore, we have elected to exclude the chapter 31 and 34 programs in costing this provision.

For the education programs costed, it was assumed that the average length of training per year is 7 months. The projected number of chapter 106, 32, and 35 trainees was multiplied by 7 to arrive at the total number of certifications per year. It was assumed that each certification action would take 1 minute. The total number of certifications was divided by 60 to arrive at the total hours required. The hours were then divided by 1,774 (2,087 hours less 313 hours for annual, sick leave usage, etc.) to arrive at the FTEE required to process the monthly certifications. It was assumed that under normal circumstances a GS-3, step 3, would process the monthly certifications. The estimated number of FTEE was multiplied by the GS-3, step 3, rate to include additional benefits to arrive at basic administrative cost. In addition, it was assumed that 15 percent of the annual number of trainees would require a review as a result of the monthly certification process. It was assumed that it would require 1 additional employee for every 2,045 actions at the average salary and benefits for a CP&E employee as estimated for Fiscal Year 1990 in the President's 1990 Budget submission. The average salary and additional benefit cost were increased by 1 percent per year for 1991 through 1994. Also included in the cost estimate were anticipated additional mailing costs.

In costing section 8, it is assumed that fewer than 100 trainees a year would claim as mitigating circumstances the personal furnishing of child care; therefore, the cost of section 8 of the bill would be insignificant; i.e., less than $1 million in benefit cost and $100,000 in administrative cost.

The benefit cost estimate for section 10 of the bill assumes that participation in a work-study program for chapter 106 will be similar to the chapter 34 program. Based on 1988 data, it is estimated that approximately 4.1 percent of the chapter 34 trainees participated in the work-study program. This percentage was applied to projected 1990 through 1994 chapter 106 trainees to arrive at an estimated number of participants in a chapter 106 work-study program. The projected number of trainees was multiplied by $837.50 (250 hours times $3.35) to arrive at the annual projected benefit cost of the proposal. The administrative cost of this provision is less than $100,000 in any fiscal year.

f. Other Assumptions - An effective date of October 1, 1989, was assumed.

STATEMENT OF
R. J. VOGEL
CHIEF BENEFITS DIRECTOR
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JUNE 9, 1989

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss several items relating to veterans' benefits: Title I of S. 13; S. 564; the report of the Commission to Assess Veterans' Education Policy; S. 1092; S. 1003; and an amendment to S. 190.

Title I of S. 13

Compensation COLA'S

Section 101 of S. 13 would authorize cost-of-living increases in the statutory rates of disability compensation and dependency and indemnity compensation (DIC) benefits for veterans and survivors in the same percentage as that which will be provided to Social Security recipients and VA pension beneficiaries.

The Administration strongly supports COLA's for these most deserving beneficiaries. We believe, however, that the Committee should instead consider the Administration's proposal--currently embodied in S. 613, which you introduced at our request--to index these increases permanently to the Consumer Price Index (CPI), as the Congress has done in the pension program.

Administration of the disability compensation and DIC programs is one of VA's most important missions. We recognize a duty to recommend periodic adjustments in monthly rates as economic conditions change. In recent years, compensation adjustments have generally been keyed to indexed cost-of-living allowances in Social Security and VA pension. However, these adjustments have not been automatic. Rather, they have been accomplished by the enactment of separate public laws designed for that purpose, the last being Public Law No. 100-687, approved by President Reagan on November 18, 1988. Since 1973, legislation has been enacted every year but one (1983) granting increases in these benefits to compensate for increases in the cost of living. VA has consistently supported these adjustments.

3.

As you are aware, Mr. Chairman, reliance on separate, annual public laws can result in problems. For example, H.R. 2945, which became Public Law No. 100-227, was not presented to President Reagan until December 22, 1987. Even though the rate increases contained in that law were effective December 1, 1987, the timing of the COLA enactment resulted in beneficiaries not receiving the first increased payments until issuance of the March 1988 checks, due to necessary administrative adjustments.

Tying compensation and DIC rates to the CPI would remove the issue of rate increases from the political arena and shield the determinations from pressures of the annual budget process. It would also save Congress the difficulty of regularly considering new veterans' COLA legislation, as it has been required to do virtually every year for over a decade and twice in the same year in one instance. Finally, it would eliminate COLA delays such as that experienced with Public Law No. 100-227.

While we certainly support granting veterans' compensation recipients the same annual COLA as that given to veteran pensioners and Social Security beneficiaries, we believe that indexing makes more sense in ensuring that our disabled veterans will receive timely increases in their benefits. Accordingly, we strongly recommend that S. 613 be adopted rather than Section 101 of S. 13.

VA estimates the cost of Section 101 to be $335,600,000 in fiscal 1990, with a five-year cost of $1.9 billion for fiscal years 1990 through 1994.

Cost-of-Living Allowance: Chapters 31 and 35

Sections 102 and 103 would increase the subsistence allowances paid to service-connected disabled veterans participating in rehabilitation programs under chapter 31 of title 38, and the rates of educational assistance paid to survivors and dependents under chapter 35, by 13.8 percent, effective January 1, 1990.

While we cannot support a rate increase of this magnitude, VA does support a 5 percent increase for these benefits in the context of the overall budget negotiations. We estimate the 5 percent rate increase in benefits for both programs would cost $5.2 million in FY 1990, with a five-year cost of $32.9 million.

The cost of the 13.8 percent rate increases proposed by section 102 would be $6 million in 1990, with a five-year cost of $39.9 million. The 1990 cost of section 103 would be $9 million, with a five-year cost of $53.9 million. Thus, the combined 5-year cost of both benefits would be $93.8 million.

Clothing Allowance

Section 111 would expand the clothing allowance to veterans with a service-connected skin condition who use a medication which the Secretary determines stains or otherwise damages their clothing. This provision is substantially identical to section 201 of S. 2267 and H.R. 4672, both of which were introduced last session at the request of the Reagan Administration.

Current law, 38 U.S.C. § 362, provides that a clothing allowance may be paid to a veteran, who, because of service-connected disability, wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the veteran's clothing. VA has learned that the medications used by some veterans in treatment of their skin conditions may irreparably stain their clothing. Accordingly, section 111 would authorize the Secretary to determine whether medication for a service-connected skin condition causes such damage to clothing as to require payment of a clothing allowance.

We estimate the benefit cost of this proposal to be less than $1 million in any fiscal year and the administrative cost to be less than $100,000. The Administration strongly supports this proposal.

Pension Benefits for Hospitalized Veterans

Section 112 deals with the reduction of pension benefits for veterans who are receiving extended care at VA expense in hospitals, nursing homes, and domiciliaries. This section would (1) increase the amount payable to such veterans to $105 and (2), in the case of hospitalized pensioners, extend from three to eight calendar months the period after which benefits would be reduced. We do not oppose section 112.

Under current law, if a veteran pensioner who has neither spouse nor child is being furnished nursing home or hospital care by VA, his or her pension is reduced to $60 per month after three calendar months following admission. Pension for such a veteran receiving domiciliary care from VA is so reduced after two calendar months. Section 112 would change the law to increase the amount payable to all such veterans to $105 and, in the case of hospitalized veterans, not reduce payments until eight calendar months following admission. The time following admission after which payments would be reduced would remain unchanged when the pensioner is receiving VA-provided domiciliary or nursing home care.

With respect to the change from $60 to $105 per month, we note that the current amount has been in force since 1979. We believe that an increase may be warranted.

Concerning extension of the three-month period, we recognize that, although the Government furnishes the great part of the support for a hospitalized veteran without dependents, the veteran may in some cases have continuing obligations and fixed expenses, such as rent. Unfortunately, the current system may leave a veteran with the difficult choice of remaining in the hospital until well, and losing home and personal possessions, or of leaving the hospital prematurely in order to meet

8.

continuing obligations. If the veteran remains long enough for the reduction to go into effect, the institutional stay may be unnecessarily prolonged since it is difficult to place the veteran back in the community when he or she lacks funds for a security deposit and other expenses.

VA believes that, where a veteran has no dependents and is being maintained at government expense, gratuitous, need-based benefits should not be allowed to merely increase an estate to be inherited by collateral heirs. Accordingly, we do not support an outright abolition of the pension-reduction provision.

However, if hardship and unnecessary institutionalization are to be avoided, reductions should be reserved for veterans who receive extended care from the VA and who thus can be presumed not to be returning to the community in the immediately foreseeable future. With the increasing emphasis on decreasing the duration of hospital stays, we believe few veterans would be affected by a reduction which did not occur until eight months following admission. Those veterans whose benefits continued would not be in danger of losing their homes so that it would be easier for the hospitals to place them back in the community. The bill provides that the reduction will not go into effect for those who are being rehabilitated and whose discharge is imminent. This is an excellent provision which will prevent unnecessary disruption of benefits and allow for better predischarge planning.

VA estimates the cost of section 112 to be $2.2 million in fiscal year 1990, with a five-year cost of $11.0 million for fiscal years 1990 through 1994.

Limited Extension of VRA Appointment Authority

Section 113 would extend, through December 31, 1991, the Veterans' Readjustment Appointment (VRA) authority for Vietnam-era veterans who have a service-connected disability or who served in the Vietnam theater of operations.

The VRA authority has been a great success in providing employment opportunities for disadvantaged Vietnam-era veterans. It allows Federal agencies to hire these veterans without competition on Civil Service examinations and subsequently to convert them to career or career-conditional appointments after two years of satisfactory employment and training.

VA strongly supports the extension of this authority. This authority has led to the permanent employment of many disabled and Vietnam-era veterans who, once provided the opportunity, have proved to be high-quality employees. Extending the authority for readjustment appointments can aid veterans in completing their readjustment.

Multiyear Procurement

Section 121 would expand the Department's multiyear procurement authority in 38 U.S.C. § 114. Currently, VA is authorized to acquire supplies and services by use of multiyear contracting methods solely for use in its health-care facilities. If enacted, this limitation would be eliminated, and all VA activities would be authorized to use this contracting method.

The Administration, which proposed this authority last year (S. 2036), strongly supports section 121. We believe that there is no valid reason to restrict current multiyear contracting authority to products and services for use at health-care facilities. Enactment of the proposal would allow multiyear contracting in the acquisition of headstones and markers by the National Cemetery System and of automated data processing equipment and software by the Office of Acquisition and Materiel Management. These contracts often require significant start-up costs, both in terms of capital outlays and personnel resource commitments. Multiyear contracting would allow the contractor to equitably amortize these investments over an extended period of time. The expected result would be increased competition and better pricing, without any increase in administrative costs.

Also, if multiyear contracting authority is granted to all civilian agencies, significant costs to the Government would be avoided. Multiyear contracting would lower acquisition prices, reduce administrative costs, and enhance the quality of vendor performance.

S. 564

S. 564 would amend Public Law No. 100-527, the Department of Veterans Affairs Act, by adding, in section 4 of that Act, an additional item to the list of functions to be assigned to the Assistant Secretaries. The new function provided by the bill would entail the review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans, including women, and the development and implementation of policies facilitating access of such veterans to services and benefits provided under laws administered by the Department.

The Department generally views favorably legislation which would assist minority veterans; however, we oppose the proposed legislation for three reasons: it would restrict the Secretary's authority to place responsibility for implementation of policies with those elements normally responsible for carrying out this important mission; it would essentially duplicate a provision of Public Law No. 100-527 which currently makes the Assistant Secretaries responsible for equal opportunity functions; and, in our view, it is unnecessary because the activities contemplated by the proposed bill have already been incorporated in the structure set up by the Department to assist minority veterans.

Our first objection is from a management point of view: The bill would require the Secretary to assign "line" responsibility to a staff officer. As drafted, the bill requires that responsibility for the "implementation of policies" be assigned at the Assistant Secretary level. The "line" agencies of the Department--the Veterans Benefits Administration (VBA), the Veterans Health Services and Research Administration (VHS&RA), and the National Cemetery System--are and should be responsible for the implementation of the policies of the Department. To assign to Assistant Secretaries the role of implementing policy also assigned to the various elements would at best result in dual responsibility and at worst create a needlessly complex chain of authority, with management responsibility resting in part in a position created to advise, not to command.

Indeed, Mr. Chairman, requiring implementation at the staff level would run completely counter to the legislative intent of the Department of Veterans Affairs Act. As the Senate Committee on Governmental Affairs stated in its report on that legislation, in a highly decentralized agency like the VA, a clear chain of command between the

Secretary, the operating units, and the Assistant Secretaries is essential. If nothing else, it is imperative that "implementation of policies" be deleted from the proposed new addition to the functions listed in section 4 of Pub. L. No. 100-527.

Second, we believe that Congress has already mandated staff responsibility for the vital concerns expressed in S. 564. Public Law No. 100-527 establishes equal opportunity as one of the functions of the Assistant Secretaries. This function would serve as a natural umbrella for the review and assessment provisions included in the bill. It would seem unnecessary to establish a function which would overlap or duplicate the duties already mandated by law for the Assistant Secretaries.

Finally--and perhaps most importantly, Mr. Chairman--VA, through its line agencies, already has in place outreach efforts and specific programs aimed at the very groups S. 564 seeks to assist. We not only share the concerns which S. 564 expresses, we have made it our policy to do something about them.

Under the direction of the Chief Benefits Director, VBA's outreach programs are numerous and varied. For example, VA Regional Offices are required to obtain and maintain lists of the names and addresses of women veterans in their jurisdictions in order to advise them of benefits available. Regional Offices establish liaison with the various women's veterans' organizations and provide speakers to them upon request for their meetings and special events.

The unique situation of Native American veterans receives special treatment at the VA. Joint Committees consisting of officials from VBA and the VHS&RA currently meet for purposes of setting up outreach programs to define areas of Native American population and problems of native American veterans in these areas. As a result, states with substantial Native American populations--such as Arizona, Oklahoma, and Alaska--already have programs and outreach efforts specifically directed toward Native Americans.

For Spanish speaking veterans and beneficiaries, pamphlets and papers written in Spanish are already an integral part of outreach efforts and notification procedures where appropriate. VBA also has outreach programs geared to assist the homeless, which result in direct contact with disadvantaged members of all the groups listed in the proposed legislation.

In the area of education, VBA assures compliance with equal-opportunity laws by educational institutions through periodic reviews, investigations of complaints of discrimination, and interagency agreements.

The Department is committed to making benefits and services available to all veterans regardless of race, creed, national origin, sex, or age. We are cognizant of the problems of disadvantaged veterans, and many programs have been initiated to assist them. We are in favor of legislation which would offer assistance to these veterans. However, legislative action which would assign to staff responsibilities which rightfully belong to the line managers is not, quite frankly, going to improve the situation. We fully share the concerns which inspired S. 564, but we see its enactment as both defeating the careful analysis leading to Departmental status for VA and, indeed, as a hindrance to VA's efforts. For these reasons we are unable to support this bill.

Education Measures

Commission Recommendations

Mr. Chairman, I will now turn to the recommendations of the Commission to Assess Veterans' Education Policy. In this regard, I first would like to congratulate the members of the Commission on the excellent work they accomplished. It was no easy task reviewing programs as comprehensive as our various educational assistance programs. We appreciate the hard work that went into the Commission's report, the thoughtful exchange of ideas, and the many fine recommendations that resulted.

Over the years, our educational assistance programs have increased both in number and complexity. In the administration of the laws covering these programs, VA has tried to reach a balance between what are sometimes two competing interests. On the one hand, we want to pay veterans their benefits as quickly as possible. On the other hand, we want to pay them the correct amount as provided by law. The Commission made a number of recommendations consistent with these objectives.

The VA is in general agreement with the vast majority of the Commission's recommendations on the central issues addressed. Our detailed comments on each of these issues are set forth in "An Interim Report on Veterans' Education Policy" which we previously submitted to this Committee. Rather than merely reiterate those views here, we would instead like to emphasize those areas which we consider to be of particular significance.

First, the Commission recommended a consolidated-region approach for the processing of all education claims. In our "Interim Report," we indicated that we were studying the feasibility of this approach. This review is continuing.

Of equal significance is the focus on the subject of course measurement which has become increasingly complicated over the years. We think the Commission is to be especially commended for their recommendations in this area and the fresh insights into ways of simplifying program administration. As a result, we will more fully explore certain Commission alternatives in a Departmental study. The study will focus on the feasibility of eliminating the present distinctions between traditional and nontraditional modes of study, including course measurement without regard to the mode of delivery or to standard class sessions, and on the nature and extent of restrictions necessary on the contracting out of instruction.

The Commission has recommended that the different features of the various veterans' education programs be standardized to the maximum extent possible, consistent with their design and purpose. We wholeheartedly support this recommendation. We also agree with the Commission's innovative suggestion that a task force of Adjudicators and Education Liaison Representatives be formed to compile an accurate and complete listing of the differences in current programs.

VA further agrees with the Commission regarding counseling and support services to veterans, debt recovery and fraudulent claims, the role of continuing education, training and associated administrative resources, as well as retention of the 2-year rule, standards of progress, and the "85-15 rule." We also agree with the Commission's ideas on better publications and communications, with the caveat that improvements must be made within our available resources.

Finally, we note that several Commission recommendations have been implemented by legislation. For example, certain proposals have now been implemented involving: compliance surveys and supervisory visits; mitigating circumstances; remedial, deficiency and refresher training; and the restoration of pay reductions under certain circumstances.

Certain other significant Commission recommendations have been included in S. 1092. Before discussing that legislation, however, I want to express my particular appreciation to Mrs. Janet Steiger, who served as Chairman of the Commission, to each of the Commission members, and to the Commission's Executive Director, Babette Polzer, for their contributions in this important effort to improve VA education benefit programs.

S. 1092

Mr. Chairman, as you requested, I would now like to provide our views on a bill which you recently introduced along with Senators Murkowski and Matsunaga, S. 1092, the "Veterans Education Policy Improvements Act." While we support certain provisions of this measure and agree in concept with certain others, the VA cannot support enactment of the bill as drafted for the reasons more fully explained in the following analysis.

The first substantive provision of the bill, section 2, would authorize VA work-study students to receive payment for services at the Federal hourly minimum wage, or the applicable State hourly minimum wage, whichever is higher. This section conforms with a VA-proposed alternative to the Education Policy Commission's recommendation for a broader scale approach to such benefits. We support this provision as it would provide the equity sought by the Commission and would advance the purposes of the work-study program.

Section 3 would expand eligibility for the work-study program to include students training under the Dependents' and Survivors' Educational Assistance program (chapter 35). We do not believe chapter 35 recipients should be included in the work-study program. Chapter 35 students, in many cases, qualify for many Government-sponsored financial programs, including the work-study program funded by the

Department of Education. These same programs are not available to veteran-students because their income exceeds the financial criteria established for many Government-wide financial assistance programs.

Section 4 would include service-disabled veterans in training under the vocational rehabilitation program as part of the numerical count for reporting fee purposes. We note that school officials have responsibilities to perform functions pertaining to such trainees that frequently require additional services and assistance by the educational institution. As we stated in our interim report, we will examine the need for the fee in the context of the book-handling fee already being paid to the institutions on behalf of these students.

Section 5 would remove the distinction in attendance-reporting requirements between degree and nondegree institutions. It would also remove the prohibition against the payment of educational assistance allowance for any day of absence in excess of 30 days in a 12-month period. We support this proposal, which conforms to our formulation of the Commission's recommendation in this area, provided the effectiveness of monthly self-certification by eligible veterans is confirmed by our current study and the VA is given the authority to require such self-certification as set forth in section 7 of this measure. If this section is enacted, we will be able to remove our current regulatory requirements regarding effective dates and enrollment periods. Moreover, we would then give consideration to relying on monthly self-certification by veterans of continued pursuit of training in lieu of school attendance reporting.

Section 6 would amend section 1791 of title 38 to repeal the limit on the number of changes of program a veteran-student may make. The VA would be required to approve a second or subsequent program change only if the individual submits to counseling services beyond the initial change of program. We are opposed to the total repeal of the current limitation on the number of program changes. We believe these limitations, first instituted in response to abuses of the VA educational assistance programs during the administration of the World War II GI Bill, remain an important safeguard. We recommend retaining the limits on changes of program and requiring VA-approved counseling for changes of program beyond the initial change.

Section 7 would amend section 1780 of title 38 to provide that all education programs administered by the VA may require monthly self-certification verifying pursuit of training for both degree and nondegree students. The VA is committed to maintaining the integrity of the GI Bill while administering the disbursement of public funds to eligible persons in the most efficient and economical manner. While we endorse this provision, we note that our use of such authority will depend on the results of our current study of chapter 30 self-certification.

Section 8 of the bill would provide that difficulties beyond the control of the student in making or changing child-care arrangements is a mitigating circumstance to excuse an individual who has withdrawn from a course. As noted in our response to the Commission's recommendation on this issue, we agree that changes in child-care arrangements can and should be considered a mitigating circumstance for course withdrawal. However, since current VA policy and procedure already reflect this posture, we find this legislative proposal unnecessary. Noting the concern of the Commission, as well as the apparent concern of this Committee on this issue, we would here reiterate our intent to amend our mitigating-circumstances regulation in the manner suggested in our interim report so as to confirm and clarify our existing policy.

Section 9 of the bill provides that the effective date of a benefit adjustment based on a change in a student's course load or other change would be the date the change occurred, instead of the end of the month in which the change occurred. We support this provision in the context of implementation of the self-certification procedure as discussed in our comments on section 7 of this bill.

Finally, section 10 of this measure would make two changes in the Montgomery GI Bill Selected Reserve (chapter 106 of title 10) program. First, it would modify the criteria for determining waivers of the "two-year" rule and the "85-15" rule for certain courses provided under contract with the Department of Defense to include reservists training under chapter 106. We do not object to this statutory clarification of congressional intent. Second, section 10 would make chapter 106 trainees eligible for the work-study program. The VA does not support this proposal. As pointed out by the Commission in its report, the effectiveness of the work-study program in its current form is suffering from a general lack of participant interest. Thus, adding more eligible individual's who are already gainfully employed does not appear to be a solution.

S. 1003

Mr. Chairman, you have also asked for our comments on S. 1003, the proposed "Veterans' Educational Assistance Act of 1989," which you introduced on our behalf on May 16, 1989. This bill would make a number of amendments to the VA education and vocational rehabilitation programs to facilitate the administration of the programs and make certain provisions more equitable.

Section 101 of this measure would make the pilot program of vocational training for certain pension recipients voluntary and provide participants a trial work period. These changes are designed to improve both program participation and results.

Section 102 would amend the Montgomery GI Bill (MGIB) secondary school completion requirements by eliminating the reference to an equivalency certificate. Instead, this eligibility requirement would be broadened so that an individual would have to either have completed the requirements for a secondary school diploma or have certain alternate school credentials accepted by the Armed Forces, pursuant to regulations promulgated by the Secretary of the military department concerned. We believe that the secondary school requirement was intended to assist the military in obtaining high caliber personnel, and, therefore, the requirement should conform to the standards acceptable to the Armed Forces.

Section 103 would allow a serviceperson 14 days following initial entry on active duty within which to elect not to participate in the MGIB-Active Duty program. Current statutory provisions do not clearly state how much time an individual actually has after entry on active duty to make the election.

Section 104 would make the program of independent living services for service-disabled veterans a permanent part of chapter 31. Enactment of this proposal would enable severely-disabled veterans for whom vocational rehabilitation is not currently feasible to live more independent lives.

Sections 105 and 106 would make two amendments to the title 38 "work-study" program. First, section 105 would eliminate the authority to make work-study advance payments. Overpayments in the work-study program create liability for thousands of new debtors each year whose debts cannot feasibly be collected by offset or enforced collection. This provision would virtually eliminate accounts receivable in this program. Next, section 106 would make service-disabled veterans eligible for work-study benefits if they are pursuing training or attending school at a half-time or higher rate under chapter 31 or under chapter 34 (if the veteran's service-connected disability is rated at 50 percent or more disabling). This would provide these service-disabled veterans an additional resource in pursuing training.

Title II of S. 1003 contains various administrative provisions. The first of these would remove the VA's authority to make advance payments of chapter 31 rehabilitation subsistence allowances. These advance payments are intended to assist veterans in paying a portion of tuition and fees which many schools require prior to the commencement of training and to meet living expenses during initial periods of training. In view of the fact, however, that the VA pays all of a chapter 31 participant's training costs and such participants are eligible to receive advances from the Revolving Fund, there is little need for the current statutory authorization for advance payments.

A second provision would permit the VA to accept a school's certification as justification for renewal of an individual's education benefits following termination for unsatisfactory conduct or progress. The proposal's application would be limited to resumption of the same program at the same educational institution which reported the unsatisfactory progress. Another administrative provision would streamline measurement of combined clock-hour, credit-hour course pursuit. The proposal would greatly simplify course measurement determinations under our education benefit programs, and yield more readily understandable and consistent results.

Finally, title II of this measure contains technical and clerical amendments to title 38 which would: correct an erroneous chapter 30 reference to a chapter 36 provision for computing less than half-time training; conform the entitlement charge to the rate of benefit payment for on-job/apprenticeship training under chapter 32 when less than 120 hours are worked in a month; delete an outdated reference to prepayment allowances; and add chapter 30 to the list of chapters under which the VA can suspend benefits in certain situations.

Mr. Chairman, we appreciate your introduction of our bill, and urge the Committee's favorable action on S. 1003.

Amendment to S. 190

You have also asked for our comments on Senator Matsunaga's amendment, in the nature of a substitute, to S. 190, a bill to permit the concurrent receipt of disability compensation and military retired pay. Under current law, a military retiree must waive retired pay in order to receive VA compensation. As amended, S. 190 would remove this restriction, but would require a reduction in retirement pay in an amount equal to 100% less the veteran's percentage of disability multiplied by the compensation payable. The amendment would only remove the restriction for those who retire based on age or length-of-service and not for disability retirees.

VA does not support this amendment.

Currently, section 3104(a)(1) of title 38 prohibits, among other things, the award of VA disability compensation concurrently with military retirement pay except to the extent that retirement pay is waived under other provisions of law. Under 38 U.S.C. § 3105, a retired servicemember may waive part or all of retirement pay to receive instead an equal amount of VA compensation or pension. Waiver is often advantageous to the veteran because VA benefits, unlike military retirement, are not subject to income taxes. A prohibition against dual awards has existed in the law since 1891 and was adopted both to restrain spending and to prevent double compensation to retirees for the same period of military service.

Proponents of this and similar legislation make comparisons between military retirees entitled to compensation because of disabilities incurred during their military service and civil service retirees similarly entitled to compensation for service-connected disability. They point out that a civilian employee who has applied his or her military service as a credit toward civil service retirement can draw longevity and age-based civil service retirement and VA disability compensation at the same time, based on the same period of service. Thus, they conclude that a veteran entitled to longevity-based military retirement and VA compensation arising out of a period of service credited toward the military retirement should, as a matter of principle, be entitled to draw both benefits concurrently. We believe such comparisons to be inappropriate.

A more apt analogy is that of a person eligible both for civil service retirement payments based on age and length of service and for civil service retirement payments based on disability. The Federal Employees Compensation Act (FECA), which compensates United States civil servants for disability resulting from employment, is subject to a specific prohibition on such dual compensation. Affected employees are required to elect the benefits desired. While it is true that a Government employee may receive FECA benefits concurrently with military retirement pay, there is, for the most part, no connection between the military service for which military retirement is paid and the civilian service out of which the FECA benefits arose. The same may not be said, however, as to VA disability compensation and military retirement pay--both benefits arise from the same service.

Similarly, concurrent benefits are not payable to eligible persons based upon age and disability under the Social Security Act. Upon attainment of age 65, a beneficiary's disability benefits automatically become old-age benefits. A disabled, elderly person cannot become eligible for both disability and old-age benefits based upon the same circumstances of employment.

33.

VA disability compensation is a benefit based on the circumstances of a veteran's military service, as is military retirement pay. Allowing VA compensation payments to be paid in addition to military retirement payments based upon the same period of service would be equivalent to permitting dual longevity-based and disability-based military retirement. Thus, the law appropriately requires waiver of one to receive the other.

This issue has been thoroughly addressed in the Federal courts. In Absher v. United States, the plaintiffs asserted that the bar to dual compensation unconstitutionally denied them equal protection of the law. The Claims Court disagreed, holding that the circumstances of military retirees and civilian retirees are very different, and that there was a rational basis for Congress to make different provisions for the two groups. The United States Court of Appeals for the Federal Circuit affirmed, holding that the balance Congress struck is not only rational, but also bears a demonstrably fair and substantial relation to legitimate legislative objectives.

For nearly 100 years Congress has held that military retirement pay and VA disability compensation may not be paid concurrently. The provision for waiver of retirement pay in order to receive compensation allows a military retiree to choose whichever benefit is to his or her advantage. The enactment of this amendment would reverse the longstanding and prudent principle that a person should not receive duplicate benefits based on the same circumstances of employment or military service. The provisions of the bill which would limit its application to those retired based on age and/or length of service, and which would reduce retirement benefits using a so-called "inverse" formula would not serve to overcome this basic problem.

In view of the foregoing, VA opposes enactment of S. 190 in either its original form or as amended.

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 27 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

We are pleased to respond to your request for the views of the Department of Veterans Affairs (VA) on S. 1145, a bill "[t]o reestablish the Advisory Committee on Native-American Veterans."

Congress established the Advisory Committee on Native American Veterans with enactment of Public Law 99-272 in 1986, and extended its existence through July 1, 1989, with enactment of Public Law 100-322. This bill would reestablish the advisory committee, and continue its existence until September 30, 1991. The duties of the committee would remain the same as under prior law. It would assess the needs of Native Americans with respect to health care, rehabilitation, readjustment counseling, outreach services, and other veterans benefits, and review VA activities to meet those needs. Membership requirements for the committee would remain essentially the same as under prior law. The committee would continue to report annually to the Secretary who would in turn transmit the committee's report to the Senate and House Veterans Affairs Committees. VA opposes enactment of S. 1145.

The last report issued by the Advisory Committee on Native American Veterans in February 1988, included as one of its major recommendations, the creation of a Native American Veterans Coordinating Council. This council, which would include representation from Federal agencies serving Native Americans, and members of the Indian community, would serve many of the same purposes as the advisory committee, but not be limited to VA activities alone. As proposed, the council would promote the development, coordination, and integration of services and programs provided to Native American veterans by Federal agencies responsible for addressing their needs. Currently, there is no central point of coordination, with the result that services are fragmented and incomplete and, in some cases unnecessarily expensive. VA supports the creation of such a council, and believes it would facilitate coordination and communication among the agencies involved with Indian affairs. It would provide for more efficient delivery of services to this underserved population.

Creation of the Council would, in VA's view, negate the need for continuation of the Advisory Committee on Native American Veterans. In fact, continuation of the committee could be counterproductive as it raises the potential for conflict between the two bodies. The Department has approved implementation of the proposal for the council, and has received positive responses regarding its creation from the Office of Personnel Management, and the Departments of Labor, Health and Human Services (Indian Health Service), Housing and Urban Development, and Interior (Bureau of Indian Affairs). In our view, the proposed council should be established, and after it has been in existence for a period, its activities can be reviewed and evaluated. Reestablishing the advisory committee at the same time could interfere with creation of the council, and is simply unnecessary.

We estimate the costs of enactment of S. 1145 would be insignificant.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1145 to the Congress.

Sincerely yours,

Edward J. Derwinski

Edward J. Derwinski

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

AUG 14 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This will respond to your request for a report by the Department of Veterans Affairs (VA) on S. 1146, 101st Congress, a bill "To require the Secretary of Veterans Affairs to conduct a pilot program providing for the Secretary to make direct housing loans to eligible native American veterans for the purchase of housing on certain trust lands and certain communally-owned lands."

VA is aware that native Americans have encountered difficulties in trying to obtain VA financing for homes on trust or communally-owned lands. The reasons for this situation are complex, and we are not aware at this time of a solution to the problems of home loans on trust or communal lands. For the reasons discussed below, we do not believe S. 1146 will eliminate the problems that have prevented native American veterans from fully enjoying VA housing benefits. We would therefore propose, as an alternative to S. 1146, that a study be made of the problems encountered by native American veterans in obtaining home financing in order to participate in VA's loan guaranty program. The study should also address alternative solutions to these problems, possibly including but not limited to establishing a direct loan program for this particular group of veterans. We believe that every effort should be made to help native American veterans participate in the existing program, rather than establish a new direct loan program.

S. 1146 would require the Secretary to establish a pilot program to make direct housing loans to eligible veterans on Native American trust land during Fiscal Years 1990 through 1992. Native American trust land is defined by the bill to include Indian land in North America other than Alaska, certain Native Alaskan land, Native Hawaiian land, and other lands in the Pacific Islands.

In making these direct loans, subsections (d)-(g) and (k) of section 1811 of title 38, United States Code, would apply. These provisions state that the loans shall bear interest at a rate determined by the Secretary, not to exceed the GI loan rate, create a $33,000 maximum loan amount, and require the loans generally to be repaid in monthly installments. In addition, these subsections grant VA the authority to make advances for taxes and other purposes, to sell these loans and to manage, protect and sell the investments, to determine necessary expenses, and to make such rules, regulations and orders as are necessary or appropriate. The loans under the pilot program would also be subject to such other terms and conditions as the Secretary considers necessary to protect the interest of the United States. The views of the Native American Advisory Committee are to be considered in establishing the program.

Based on results of the pilot program, the Secretary would report to the Congress on the feasibility of a permanent program to make direct loans for housing on Native American Trust Land. The Secretary would also be required to report on the feasibility of a program of direct loans made jointly with tribal organizations and economic enterprises, with VA's portion of the funding coming from the Loan Guaranty Revolving Fund and on a guaranteed loan program where tribal organizations and economic enterprises would make the loans.

Loans under S. 1146 would be paid from appropriations authorized under this measure, not to exceed $5 million. These loans would not be funded by the existing Direct Loan Revolving Fund established by 38 U.S.C. § 1823.

VA is committed to providing benefits for all veterans without regard to race, national origin, and similar characteristics. We, therefore, are most concerned about the inability of many Native American veterans to participate in the home loan program. The major obstacles to loans on the Indian reservations have been the title and lien problems which arise from the trust status of the land and servicing. Because of these issues there is great difficulty in finding lenders willing to make loans on reservations. These problems apply as well to Native Alaskan areas and the Pacific Islands where a communal land tenure system is in place.

These problems are beyond VA's control, and we question whether the pilot program proposed by S. 1146 would solve them. The difficulties include: obtaining a leasehold on tribal lands, insufficient income and credit to support the loans, lack of title insurance, no tested legal or security instruments, the enforceability of liens, the marketability of property, lack of credit bureaus or credit reports, in some areas very little infrastructure, lack of community water and sewer services, few if any qualified appraisers, and no experience in loan termination.

We have consistently proposed as a possible solution to the difficulty in finding a lender willing to make loans on Indian reservations that the tribe act as the lender with VA providing the guaranty on the loan. We have also consistently expressed a willingness to work with tribes to set up such a program.

We note that the maximum direct loan amount of $33,000 may not be sufficient to purchase acceptable housing in the target areas, particularly in Alaska and Hawaii. Also, the bill refers generically to the Pacific Islands, whereas VA housing loans have generally been limited to the United States, including its territories and possessions.

The purpose of this bill appears to be to assist certain targeted groups who have been disadvantaged in the past. Nevertheless, the passage of this bill could lead to allegations of discrimination. For example, a veteran not of Native Samoan ancestry residing in American Samoa would be precluded from participating in this program, and thus would not be able to obtain housing assistance. A Native Samoan veteran, who may have served with this other veteran, however, would be able to obtain a loan from VA.

We must emphasize that these restrictions on non-Native land ownership makes it virtually impossible for a lender to obtain an enforceable lien on Native land. VA would not be able to implement this program unless tribal and local officials can make available leasehold estates which are freely assignable and transferable to any party, regardless of ancestry, to serve as security for the loans.

In addition, the Department of Justice has constitutional concerns which will be communicated separately.

In summary, while VA would welcome an opportunity to assist native American veterans seeking homes on communal or trust lands, we believe the issue requires more study to determine the best way to achieve this objective.

4.

Honorable Alan Cranston

VA estimates the following costs of S. 1146:

(dollars in thousands)

Fiscal Year	Benefits Costs	Administrative Costs	Total Costs	Income Earned
1990	$ 990	$ 42	$1,032	$ 52
1991	990	42	1,032	153
1992	1,320	56	1,376	264
1993	...	...	...	313
1994	...	...	...	282

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1146 to the Congress.

Sincerely yours,

Edward J. Derwinski

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

AUG 7 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This will respond to your request for a report by the Department of Veterans Affairs (VA) on S. 1158, 101st Congress, the "Veterans Home Loan Guaranty Restructuring and Solvency Act of 1989."

For the reasons stated below, VA supports the general concept of S. 1158. We have concerns, however, about certain specific provisions of the bill.

Section 2 of the bill would establish a new Home Loan Guaranty Fund to cover expenses for loans guaranteed on or after October 1, 1989. The existing Revolving Fund would cover expenses relating to prior loans. The bill would require the Government to pay 1/4 of one percent for the first 3 years for each loan guaranteed. The Government would also be required to pay the fee that would have been paid by disabled veterans and surviving spouses who are exempt from the fee.

The Secretary of the Treasury would be required to invest the balance of the new fund not required to meet current expenses in interest bearing obligations of or guaranteed by the United States. Interest earned on such funds would also be deposited into the fund.

S. 1158 would also revise the funding fee currently required by 38 U.S.C. § 1829. For most veterans, the fee would increase from 1 percent to 1 1/4 percent of the loan amount. For veterans making substantial down payments, however, the fee would decrease. Veterans putting 5 percent down would pay a fee of .75 percent of the loan amount, and veterans making a 10 percent down payment would pay .25 percent. The fee for persons assuming loans pursuant to 38 U.S.C. § 1814 would be increased to 2/3 of 1 percent. The fee for vendee loans would remain at 1 percent.

The Secretary would be given authority to increase the fee by up to 20 percent if economic projections show that the new fund would have insufficient funds to honor claims.

In addition, the September 30, 1989, sunset for the current fee would be removed. The new fee provisions would be made permanent.

This section would further provide that, in most cases, veterans obtaining loans after September 30, 1989, would have no liability to VA following foreclosure. The Secretary could establish liability against a veteran where fraud, misrepresentation, or bad faith was involved in the obtaining of the loan or the default, and where the default was not beyond the individual's control.

Section 3 of S. 1158 would extend for 1 year the current provisions of 38 U.S.C. § 1833(a)(3) relating to the sale of vendee loans. In addition, the bill would require that all sales of vendee loans, whether with or without recourse, be credited as offsetting collections without reduction.

Section 4 of the measure would permit veterans to purchase up to $10,000 in additional entitlement by paying a fee of .1 percent of the loan amount for each $1,000 of additional entitlement purchased. Generally, where such additional entitlement will be purchased, the resulting total of guaranty plus down payment could not exceed 25 percent of the loan amount. The Secretary could waive that limitation in appropriate cases.

Section 5(a) of S. 1158 would require loan holders to notify VA if they refused to accept a partial payment.

Section 5(b) of the bill would revise the definition of "net value" (38 U.S.C. § 1832(c)(1)(C)) to include 50 percent of Government's cost of borrowing the difference between total indebtedness and the guaranty amount.

Finally, section 5(c) of the bill would extend the use of the claims computation and property acquisition formulas in current law for 2 years, from October 1, 1989, to October 1, 1991.

VA is well aware that in recent years the costs to the taxpayers of operating the loan guaranty program have been significant. We share the Committee's concern about the future solvency of this program which provides an important benefit to veterans.

We support the overall concept of the new Guaranty Fund. While we generally support the revised fee structure for veterans contained in the bill, we believe a threshold should be established for exempting disabled veterans from paying the fee. A similar bill passed the House of Representatives in the previous Congress. Under that bill only those veterans whose disability was rated at not less than 30 percent would be exempt from payment of the fee. VA urges adoption of that provision. We are not proposing any change to the exemption for surviving spouses.

We oppose requiring the Government to pay the funding fee that would have been paid by those exempt.

With regard to release of liability, we recognize that many times the foreclosure was due to conditions beyond the control of the veteran and it will be difficult, if not impossible, for any repayment of a debt. We, therefore, support the release of liability proposed in the bill.

We agree with S. 1158 that veterans should remain liable in case of fraud, material fault, misrepresentation, or bad faith. We have a technical concern, however, with the language currently contained in section 2(c) of the bill which would allow liability to be established: (1) if there was fraud, misrepresentation, or bad faith on the part of the veteran; and (2) if the default resulted from circumstances not beyond the veteran's control. It is not clear if both circumstances would have to take place in order to establish a veteran's liability. We believe the two criteria should be separate since there may be instances in which the cause of the actual default would appear to be beyond the veteran's control, but the veteran did commit fraud, misrepresentation, or bad faith in the origination of the loan. In such a case, we believe that VA should be able to establish liability against that veteran.

We support paragraphs 1 through 3 of section 3(a) of the bill which would extend for 1 year the current provisions of the law relating to the sale of vendee loans. We would prefer, however, that the Committee adopt the vendee loan sale provisions contained in S. 898 which would permanently remove the prohibition against selling vendee loans without recourse.

Paragraph 4 of section 3(a) of the bill would require all loans sold, whether with or without recourse, to be credited as offsetting collections of the loan funds without reduction. VA opposes this provision.

When loans are sold with recourse, the Government has an obligation to repurchase the loan in the event of default. Accordingly, established budget scorekeeping conventions recognize that the proceeds from such sales are a means of financing outlays, like borrowing, not an offset to outlays. Treating proceeds from sales with recourse as collections misstates the true cost of the transaction to the Government. Therefore, this provision is contrary to sound fiscal management, and violates the basic premise of the Administration's loan asset sales program.

Concerning the new permanent budget authority created in S. 1158, by requiring a Government matching payment to the new Fund, we believe this concept should be considered in the larger scope of the Administration's credit reform proposal which would provide appropriations for subsidy amounts without limiting VA's ability to guarantee loans.

Since S. 1158 does not specify a funding source for this Government contribution, it would appear to create permanent budget authority; i.e., a permanent mandatory stream of Federal obligations not subject to the annual appropriations process. In the alternative, the requirement for a Government contribution may establish a loan guaranty ceiling. In the absence of sufficient appropriations, VA may be unable to guarantee new loans unless sufficient funds were available to make the current year's contribution.

We oppose allowing veterans to purchase additional entitlement. If enacted, this section would increase the Government's exposure on certain loans to as much as $46,000. Currently, the maximum guaranty is $36,000. In view of the large losses sustained by VA in recent years in this program, and the overall Federal budget deficit, we must oppose any increase in the guaranty at this time.

Section 5(a) of the bill requires loan holders to notify VA if they refuse to accept a partial payment. We favor this section of the bill.

A VA regulation (38 C.F.R. § 36.4315(b)) currently requires loan holders to accept partial payments under certain circumstances. We expect loan holders to comply fully with that regulation. VA stresses this regulation in its loan servicing efforts, and periodically reminds program participants of the requirements of this provision. This notification requirement will serve as an additional check to insure holder compliance.

In addition, prompt servicing action early in a default is important in trying to reinstate the loan, and in saving the veteran, the VA, and the loan holder from the adverse consequences of a foreclosure and guaranty payment. Receiving the notification required by the bill would give us early notice of a veteran's default. This would give VA the option of intervening or taking other appropriate action, resources permitting.

Section 5(b) of the bill would revise VA's net value calculation. This section would effectively supersede regulations VA has proposed to take effect on or about August 1, 1989, which would require VA to take into account the full interest cost of funds used to acquire property. In lieu of these proposed regulations, S. 1158 would have VA consider only 50 percent of the cost to the Treasury of borrowing the excess of the total indebtedness over the amount guaranteed.

The Federal Government is presently required to borrow money in the capital markets in order to cover some of its operating expenses. The cost of borrowing these funds is a part of the true cost of running the Government. Therefore, we believe it is reasonable to take interest costs into account in computing "net value." Although S. 1158 considers only half of these costs, and therefore understates the true cost to the Treasury, we prefer this version to the prohibition of recognition of interest costs contained in H.R. 1415 which recently passed the House of Representatives. Thus, while we continue to support the proposed regulation, VA believes this amendment represents a reasonable compromise.

In summary, VA shares your concerns about the loan guaranty program. We appreciate the Committee's efforts to address the concerns through S. 1158, and we would be happy to work with the members of the Committee on resolving our concerns which we have identified.

Based on the Fiscal Year 1990 President's Budget of last January, VA estimates that, if S. 1158 was enacted, the new Guaranty Fund would not require any appropriation, other than the mandatory Government payment discussed above, for the first 3 years. That fund will, however, experience a loss of income of $97.8 million in Fiscal Year 1993, and $264.1 million in Fiscal Year 1994. Additional appropriations will probably be required by the sixth year; i.e., Fiscal Year 1995. VA further estimates that the existing revolving fund will require a first year appropriation of $828.5 million, and a total 5-year appropriation of $2.4 billion.

The projected 5-year cost of S. 1158 is as follows:

	Appropriations (in thousands of dollars)		
Fiscal Year	Government Payment to New Fund	Needed for New Funds	Existing Revolving Fund
1990	$ 30,202	...	$ 828,500
1991	63,011	...	416,700
1992	99,533	...	474,200
1993	103,999	$ 97,800	460,400
1994	103,708	264,100	245,200
Total	$400,453	$361,900	$2,425,000

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1158 to the Congress.

Sincerely yours,

Edward J. Derwinski

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 27 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to respond to your request of June 30, 1989, for the views of the Department of Veterans Affairs (VA) on S. 1188, a bill "To amend title 38, United States Code, and the Internal Revenue Code of 1986 regarding the use of Internal Revenue Service and Social Security Administration data for income verification for purposes of laws administered by the Department of Veterans Affairs."

Essentially, the bill would provide: (1) the VA with the same access to Internal Revenue Service (IRS) tax data that other needs-based programs (e.g., Food Stamps and Aid to Families with Dependent Children) have enjoyed for a number of years; (2) notice to beneficiaries of VA pension, parents' dependency and indemnity compensation (DIC), income-tested health care and individual unemployability benefits that the income they report to the VA would be subject to comparison with IRS and Social Security Administration information; (3) verification procedures to be followed before terminating, denying, suspending, or reducing the aforementioned VA benefits; (4) prohibitions on furnishing medical care to eligible veterans until they receive the above notice and agree to pay a modest co-payment if they are determined to have incomes above a certain level; and (5) placement of administrative cost savings in the VA Compensation and Pensions appropriation account and charge costs incurred under the bill to that account.

We believe that such an income verification program should begin at this time with the VA pension program, as the largest savings can be achieved from this program. We therefore recommend including only the pension program in the legislation at this time.

In March 1988, GAO reported to the Ranking Minority Member of the Senate Veterans Affairs Committee on a review of the accuracy of beneficiary income reporting under the VA pension program. Using tax data, GAO found, of 1.4 million 1984 VA pension recipients, 698,000 had income reported from them to IRS and SSA by third-party sources. Of these, 549,000 had $947 million more income on tax records than was recorded on VA records. GAO estimated that VA was unable to identify $157.2 million in potential overpayments because it lacked access to tax data.

Given the potential savings and the lack of data on potential tax system consequences, GAO recommended that Congress amend the Internal Revenue Code to allow VA's pension program access to tax data so VA can prevent improper payments by verifying the income information that beneficiaries report.

Our analysis of the costs associated with S. 1188 are divided into two parts, those attributable to: (1) programs administered by the Veterans Benefits Administration (VBA), and (2) the medical care program carried out by the Veterans Health Services and Research Administration (VHS&RA). There would also be a cost, to be proportionally allocated between the two Administrations, of $43,200 each year to reimburse both the IRS and the Social Security Administration for their services.

The VBA portion of the costs would include, in addition to the aforementioned IRS/Social Security Administration computer matching services, annual added personnel expenditures and postage for a one-time mailing to existing beneficiaries of the covered VBA benefits programs.

Assuming 121,000 erroneous payments based on 1988 income information (i.e., incorrect income amounts reported to the VA by beneficiaries of covered VBA benefits programs of at least $100 in each case underreported), VBA's Compensation and Pension Service will require an estimated additional 200 FTEE (150 at the GS 9 and 50 at the 11 level) for the first two full fiscal years the income comparison procedures called for under the bill are implemented. This is based on the anticipation that notification of beneficiaries may not be accomplished until late in 1989, leaving individuals who underreported 1988 income information still underreporting current income. After the second year, we anticipate the work load to drop by 75 percent to a much reduced estimated 50 FTEE needed to enforce the verification program which is, by then, expected to uncover income discrepancies mainly only of applicants for VBA benefits.

The following is a summary of estimated VBA costs by fiscal year (dollars in thousands):

FY	FTEE	Cost
1990	100	$ 3,599
1991	200	6,791
1992	125	4,296
1993	50	1,750
1994	50	1,767
		$18,203

These estimated costs assume: (1) full cooperation from both the IRS and the Social Security Administration with timely receipt of the first data matches by April 1, 1990; and (2) no additional personnel being required for VA's Finance activity because of the transfer of collection responsibility of active compensation and pension awards with receivables to the Centralized Accounts Receivable System (CARS).

The VHS&RA portion of the costs includes software development and updating, notification, equipment, and processing. The total recurring costs are estimated to be $420,036 and the total nonrecurring costs to be $2,303,149. The assumptions used in developing these projections are as follows.

Approximately 40 percent of the 2.4 million medical care beneficiaries treated by the VA annually would be processed under the system devised according to S. 1188 guidelines. They would include Category A (i.e., nonservice connected veterans eligible as a result of income testing) and Category B applicants for medical care. A central clearing location for receiving information from field stations (i.e., 172 hospitals and 6 independent clinics) on identified veterans and processing tax data to determine eligibility for medical care would need to be created. We project that initially 10 percent of the 960,000 veterans subject to income comparison procedures under S. 1188 would be "hits" (i.e., applicants with underreported income) requiring an average of 2 hours administrative processing time each for verification. Thereafter, a similar "hits" ratio of 10 percent is expected but only as to a lesser population of veterans (i.e., the additional 192,000 estimated new patients), still requiring the same processing time of 2 hours of verification per veteran.

The costs for VHS&RA software development and update are based upon three GS-12/5 computer programmers working an estimated 400 hours (i.e., at $18.78 per hour) initially and one programmer working an estimated 180 hours annually thereafter. They are respectively, $22,536 and $3,380.

Notification costs (which, incidentally, do not include the additional time that will be required to explain to veterans at the time they apply for medical care that their income reporting will now be compared with VA obtained tax data) are calculated on mailing 960,000 letters ($240,000) and 700 hours of clerical preparation at the GS-7/5 $10.59 rate ($7,413). The total cost of initial notification would be $247,413.

In addition to an estimated annual equipment upkeep cost of $10,000, the costs for processing of information for VHS&RA are projected to be a nonrecurring $2,033,200 for the first year and a recurring $406,656 annually thereafter.

Honorable Alan Cranston

Thank you for the opportunity to provide the VA's comments on this legislative proposal.

Advice has been received from the Office of Management and Budget that there is no objection to the presentation of this report on S. 1188 from the standpoint of the Administration's program.

Sincerely yours,

Edward J. Derwinski

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 27 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for VA comments on S. 1306, a bill "[t]o amend title 38, United States Code, to extend the preventive health-care pilot program of the Department of Veterans Affairs, and for other purposes."

The bill would require VA to conduct a pilot program of preventive health care services targeted at all veterans to whom VA "shall" provide care. It would require, in addition, that veterans be offered annually a minimum of two preventive health care services. The measure would further expand the scope of the program by directing that: each VA health care facility implement a "major preventive health care and health promotion initiative for such veterans;" and that the Chief Medical Director designate an official to assume responsibility for all activities under this legislation. Finally, the bill would set limits on expenditures under the program, expanding from $16 million in Fiscal Year 1990 to $20 million by Fiscal Year 1994.

The desirability of providing veterans with preventive health-care services cannot be questioned. Under existing law, which defines the term "medical services" to include preventive health-care services, VA regularly provides veterans with preventive services when they are first examined and treated upon entry into the VA health-care system. Additionally, VA has encouraged its medical facilities to emphasize and provide special, targeted preventive health-care services annually. We don't believe, however, that enactment of a statutorily prescribed preventive health-care program such as that contemplated by this bill, is warranted. Accordingly, we oppose enactment of the bill.

The preventive health-care services pilot program first authorized by Public Law No. 96-22, and continued by Public Law No. 98-160, helped establish a concerted, targeted VA effort to routinely provide preventive services. The fact that VA has continued to provide key preventive services to veteran patients makes further legislation, and particularly a pilot program, altogether unnecessary.

Under the pilot program, VA provided literally "millions" of individual preventive health-care services to veterans. As our reports to the Congress explained, most services fell into one of eleven specific categories, including but not limited to various cancer screening programs, cholesterol screening, hypertension screening, influenza immunizations, nutrition/weight control counseling, physical fitness/exercise, and smoking cessation. VA has continued to emphasize one specific type of service each year. Thus, in the first year, emphasis was placed on influenza immunizations, with the result that many "at risk" veteran patients were immunized. The Veterans Health Services and Research Administration will soon issue a new directive to its medical facilities identifying "cholesterol screening" as the next specific preventive health-care service to be targeted for emphasis.

VA recognizes the value of preventive health-care measures and is furnishing those valuable services. This bill, however, would unnecessarily complicate the work of our medical centers by imposing additional obligations -- mandating services for some veterans, proscribing them for others, for example. By imposing additional obligations on the Department -- perhaps currently attainable -- it deprives us of flexibility that may later prove vital. Moreover, since the validity of the thesis underlying the "pilot" has been demonstrated, we can find no strong countervailing rationale to merit enactment of this provision.

S. 1306 limits the costs of the pilot program to $16 million in Fiscal Year 1990, and $90 million over five fiscal years. VA estimates, however, that the cost of full implementation of the mandatory program required by the bill would far exceed those cost limits.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1306 to the Congress.

Sincerely yours,

Edward J. Derwinski

Edward J. Derwinski

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

AUG 1 1989

Honorable Alan Cranston
Chairman Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

This is in reply to your request for our views on a draft bill, which has since been introduced as S. 1341, pertaining to our administration of the National Memorial Cemetery of Arizona (NMCA).

Formerly a State veterans cemetery developed by means of the Federal matching-grant authority of 38 U.S.C. § 1008, the Arizona cemetery was added to the National Cemetery System under authority of Sec. 346 of Pub. L. No. 100-322. That legislation expressly waived a provision in law that would otherwise have required Arizona to repay the Federal Government the amount of the grant that had been used to establish the cemetery. Further provision was made that for purposes of its operation, for each of the first three years after its conveyance by the State the Federal Government could not obligate an amount greater than (1) the amount of the Federal plot allowances paid to Arizona under 38 U.S.C. § 903(b)(1) in FY 1987, or (2) the amount of plot-allowance money it is estimated would have been paid during each such year had the cemetery not been conveyed.

S. 1341 would authorize the Secretary of Veterans Affairs to waive Federal competitive-hiring procedures with respect to former employees of the State veterans cemetery who seek employment with the VA in connection with the cemetery's operation. Any such employees, while exempted from laws relating to appointment in the competitive service, would still be subject to meeting unspecified "criteria and qualifications" established by the Secretary.

Section 1(b) of the bill would further impose a requirement that the Secretary prepare and submit, to the Veterans' Affairs Committees of the House and Senate, operating budget plans for the cemetery for each of FY's 1989, 1990 and 1991. The requirement appears aimed at identifying any predicted shortfalls in the Government's ability to fund a fully operational cemetery, given the limitations on obligations imposed by Pub. L. No. 100-322.

Mr. Chairman, regretfully we must oppose enactment of this bill.

Current regulations (5 C.F.R. § 316.701) already afford agencies the latitude to convert positions when State-government enterprises are taken over by the Federal government. In this instance, VA weighed that option and chose not to exercise it. At this time, the NMCA is fully staffed, and any future vacancies can be adequately filled through competitive procedures.

We, of course, share the sponsors' concern for the fates of those who worked for the cemetery when it was conveyed to the United States. We are pleased to report that all of the former permanent employees were offered or have jobs with the State of Arizona.

The bill's budget-reporting requirement is not necessary. While the requested information is undoubtedly of legitimate concern to the committees in their oversight capacities, it would be willingly shared by the Department upon request. It is inappropriate to mandate its provision by statute.

There need not be concern about the adequacy of funding for the cemetery's operations and maintenance. The cemetery will be adequately funded notwithstanding the constraints of Pub. L. No. 100-322, as the State of Arizona has agreed to provide $390,000 in supplemental funding over the next three years. As indicated, we would, upon the committee's request, be glad to furnish budgeting information as it is developed.

For all of the foregoing reasons, we oppose the bill's enactment.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 1341 to the Congress.

Sincerely yours,

Edward J. Derwinski

Edward J. Derwinski

The bills listed below were introduced by the Committee Chairman at the Administration's request made in letters dated as shown and printed in the Congressional Record as shown.

Bill number	Date of letter of transmittal	Congressional Record citation	
		Page	Date
S. 748	March 20	S3614	April 11.
S. 898	April 17	S4612	May 2.
S. 899	March 30	S4612	May 2.
S. 1003	May 10	S5373	May 16.
S. 1004	May 10	S5373	May 16.
S. 1110	May 22	S5989	June 1.
S. 1147	June 2	S6405	June 8.

On March 2, 1989, the Chairman requested VA's views on S. 109; on June 23, 1989, VA's views on S. 1211; and on July 11, 1989, VA's views on S. 1279. On June 7, 1989, the Chairman requested the views of the Department of Defense (DOD) on S. 1092, and on June 15, 1989, DOD's views on S. 1141. On July 11, 1989, the Chairman requested the views of the Office of Personnel Management on S. 1279. By the date on which this report was filed, reports had not been submitted on those measures.

By letters dated as indicated, the Chairman requested VA's views on the following bills: S. 86, S. 192, and S. 405 (March 2); S. 846 (April 25); and S. 947 (May 17). In the case of S. 947, the Department has informally requested that VA's testimony on this bill at the Committee's May 18, 1989, hearing be used in lieu of agency report; and in the cases of S. 86, S. 192, S. 405, and S. 846, VA's testimony at the Committee's June 16, 1989, hearing. In lieu of such reports, excerpts from VA testimony at the May 18, and June 14, 1989, hearings giving the Department's views on these five bills and S. Amendment No. 124 to S. 13 from the June 14, 1989, hearing are reprinted below.

STATEMENT OF
ANTHONY J. PRINCIPI
DEPUTY SECRETARY
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
MAY 18, 1989

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the array of legislative initiatives on your agenda today, including certain VA proposals which we appreciate your introducing on behalf of the Administration. We have noted that with respect to several subject areas, the committee is considering different bills addressing the same subject. Accordingly, we have organzied this statement by subject matter.

Before I begin, I would note that the Department of Justice is now studying the various bills that are the subject of the Committee's hearing, and has a number of constitutional and other legal concerns regarding those measures. The Justice Department intends to prepare a separate letter to the Committee discussing those concerns.

* * * * *

RECRUITMENT, RETENTION AND OTHER PERSONNEL MATTERS

Mr. Chairman, I next turn to legislative measures which would impact on VA personnel matters, particularly S. 947, a bill you recently introduced which contains provisions aimed primarily at helping us recruit and retain highly qualified health care professionals. We are all aware of the difficulties VA is experiencing in many locations recruiting and retaining various health-care professionals. We support some of the legislative proposals before us today, and oppose others. We can all agree, however, that some action will be necessary to enable us to obtain those critical manpower skills that are essential to meeting the health-care needs of veterans.

As you are aware, an internal nurse pay task force has developed ideas of our own for restructuring the nurse pay system. Those ideas are still being reviewed and fine tuned. However, seeking decentralization and greater local flexibility have been hallmarks of that group's efforts. We recommend deferring action on a restructuring of the title 38 pay system, altering overtime, and making changes to the premium pay provisions until all task force proposals can be fully developed and reviewed, and until proposals can be submitted through the normal legislative process.

Nurse Pay Structure

Section 101 of S. 947 would completely restructure the pay system for VA's registered nurses, nurse anesthetists, and other health care positions the Secretary determines should be brought under the system. It would change the pay system from one using a national pay rate schedule, to one involving locally established pay schedules tied to pay rates surveyed in each local community. Although the proposal contains features which we support such as greater pay flexibility and greater decentralization of the paysetting process, it would also have many problems. It is not a proposal we can support.

Under the proposed system, each health-care facility director would survey the entry-level compensation for corresponding health-care positions in comparable non-VA facilities in the same labor market, and repeat the survey process annually. Procedures would be established by regulation to determine the number of non-VA facilities to be surveyed. However, if there were an insufficient number of facilities in the local labor market, or not enough comparable health-care positions, the director could recommend basing rates on a survey of another comparable labor market, subject to review by the Chief Medical Director. Following the survey, facility directors would prescribe pay schedules starting with a minimum rate competitive with the entry-level rates at the non-VA facilities, and make corresponding increases or decreases in all other rates within grades. These new schedules would replace existing special salary rates now authorized under 38 U.S.C. § 4107(g). Pay for entry level positions could not exeed the maximum pay rate for grade 13 on the General Schedule, except for managerial or supervisory positions. Pay for those positions could be as high as the level V Executive Schedule pay cap. Under the new "survey system," although directors could increase or decrease pay rates, no employee would suffer a pay loss if the salary rates were decreased, provided the employee continued to serve in the position at the facility.

While we do not support your specific proposal, we would point out some of the positive as well as negative features of the measure. Some features we find positive are contained in other bills pending in Congress, notably H.R. 1199, as well as in yours. First, as the proposal would provide, we believe continued use of a matrix that includes pay rates, "steps" within grades, and separate grades, is essential. Equally important, we believe, is maintaining in any system the authority to adjust pay to meet local market conditions. "Locality" pay discretion may be a central feature of any effective pay system for the future. We also support giving VA the discretion to include health-care professions in addition to nurses in any new system, provided there are recruitment and retention difficulties in those professions. There is also a place for some local wage surveying. Surveys are now conducted as part of the process of determining the special salary rates in effect at many of our facilities. However, specifying in statute the frequency of each local survey presupposes that market place changes occur with regular frequency and is, we believe, overly prescriptive. We also object to the extensive reporting requirements this section would impose.

Removing Cap On Nurses' Overtime Pay

Section 102 of S. 947 would remove the existing ceiling on overtime pay for nurses in higher pay grades. Current law permits payment of overtime at one and one-half times a nurses basic pay rate, but caps the overtime rate at one and one-half times the basic rate for a nurse in the intermediate pay grade, step one. This section could be a useful tool for furthering our efforts at retaining our most experienced and qualified nurses, those who are above the intermediate pay grade.

"Additional" Pay Provisions

Section 103 of S. 947 would provide a 6% pay differential for a nurse assigned to a head nurse position for at least 30 consecutive days, and section 106 would authorize a 1% pay differential for any nurse who is recertified in a specialty in which the nurse is employed. Finally, section 8(a) of S. 574 would provide the Secretary with discretionary authority to enhance the premium pay of nursing assistants if necessary for recruitment and retention. Our task force is reviewing the proposals to allow increased pay for head nurses, premium pay for nursing assistants, and premium pay for specialty recertification.

The head nurse position is one which is often difficult to fill without some increased incentive. The 6% increase could help provide that incentive. We oppose, however, the provision which requires that the additional pay for head nurses be considered as basic pay for purposes of other employment benefits such as insurance and retirement benefits. In our view, the additional pay is a type of premium pay. The law does not treat any other form of premium pay as basic pay for title 5 benefit purposes. As a case in point, S. 947 provides that the proposed premium pay for nurses who are recertified in a specialty would not be treated as basic pay for purposes of those other benefits.

With respect to premium pay for nursing assistants, this provision would add nursing assistants to that list of professions to whom the VA may provide enhanced premium pay if it is needed. We do not have system-wide problems recruiting or retaining nursing assistants. This measure would give VA officials more flexibility when seeking tools to alleviate any problems we do have, and we support the provision.

The additional pay for specialty recertification, on the other hand, would not provide a significant additional recruitment or retention incentive. We currently have authority to advance a nurse's pay from 1 to 5 steps within a grade based on attainment of certification by a national professional organization, and demonstration of a high level of job performance. The system we already have of recognizing nurses who obtain certification is preferable as it allows flexibility in the number of steps which we may grant, it gives a continuing monetary benefit, and it provides for considering of an employee's performance.

Military Retired Pay

Section 104 of S. 947, and section 8(b) of S. 574 would expand VA's existing authority to grant exceptions to a required reduction in retired military pay for health-care professions in addition to physicians. The S. 574 provision would expand the exception authority to registered nurses only, while your bill would permit exceptions for any personnel involved in providing either direct patient care, or services incident to direct patient care. These provisions represent a means of improving VA competitiveness. We strongly favor enactment of the change, but we prefer your bill which would permit exceptions for a wide array of health-care workers, provided we are having recruitment difficulties. Thus, we support section 104 of S. 947. It should be noted that although this provision will not increase VA outlays, it will continue outlays for military retired pay.

Section 5532 of title 5, United States Code, now imposes upon retired officers of the uniformed services, a substantial reduction in their retired pay when appointed to civilian positions in the Federal Government. Under that section, the former officer's retired pay, following appointment, is reduced to an amount equal to $7,696.51 plus half the remainder of his retired pay. (Originally the base figure was $2,000; the statute authorizes an increase keyed to Consumer Price Index increases.) The statute also imposes an overall effective ceiling equivalent to Executive Level V ($75,500), upon the aggregate of retired pay and civilian pay.

Naturally, this reduction makes Federal employment, including VA employment, less attractive for retired military health care officers. We now have authority in 38 U.S.C. § 4107(i) to authorize exceptions to the statutory loss of pay for well-qualified physicians. Exercised infrequently and, we believe, prudently, the authority has nevertheless been particularly helpful in selectively recruiting highly qualified physicians in a variety of scarce categories. In our view, allowing VA to relieve retired military health-care personnel from the required reduction would attract many more of these individuals to VA employment when they retire from the uniformed services. This expansion would be particularly helpful in recruiting and retaining nurses at facilities experiencing nursing shortages.

While we support section 104 of S. 947, the Administration also urges that equivalent authority be provided for the Secretary of Defense. To provide the Secretary of Veterans Affairs authority to grant exceptions to the restrictions in section 5532 of title 5, United States Code, while failing to provide reciprocal authority to the Secretary of Defense, will further exacerbate DoD's difficulties in attracting and retaining health care professionals.

Raising the Cap on Special Salary Rates

Section 105 of S. 947 would allow VA to approve special salary rates exceeding the maximum rate of the regular pay rates by two times, rather than the currently permitted one time. It also requires that, whenever a special rate is authorized that is at least 94% of the maximum allowable rate, VA must report that fact to the Veterans Affairs Committees of Congress.

Finally, the section would reduce from 90 days to 45 days, the period during which the Office of Personnel Management must either approve or disapprove special salary rates proposed for title 5 employees. We do not support raising the overall cap on special salary rates.

We are presently evaluating ways of revising the basic pay schedule which would greatly reduce the need for special salary rates. Therefore, a broad expansion of the special salary rate authority is not desired at this time. However, we can support a more restrictive measure which would increase the authorized special rate for intermediate grade registered nurses at the small number of VA medical centers which are presently paying 90% or greater of the maximum allowable rate. This will allow us to remain competitive in certain areas of the country where we are now "bumping up" against the special rate cap. We do not object to the reporting requirement, nor do we object to the change in the review period given to OPM as, in most cases, the full 90 days is not now being used.

Health-Care Professionals' Cash Awards

Section 201 of S. 947 would direct the Secretary, by regulation, to establish a program to pay cash awards to full-time physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries who serve as supervisors or managers. The minimum award under the program would be 5% of the individual's basic pay, and the maximum could be 20%. Not more than 20% of the individuals in each of the eligible professions could receive an award. Finally, any cash award would not be considered basic pay for purposes of other employee benefits such as insurance or retirement.

We know that rewards for exemplary managerial or supervisory skills encourage continued exemplary performance. Special "step" advancements for performance are already authorized under Department policies pursuant to section 4106(c) of title 38 for title 38 employees. However, there is not now any specific provision in title 38 for cash performance awards for those employees. We are not opposed to enacting explicit authority in title 38 for cash performance awards for title 38 managers and supervisors, but we cannot support this proposal as it is drafted. First, we are concerned that it is not just managers and supervisors who merit recognition through monetary awards. Many health-care professionals who are on the "front lines" providing direct patient care are also deserving, but would not be included in this provision. Also, many exemplary employees work part-time, and would also be ineligible for an award whether they are a manager or supervisor, or not. We therefore favor explicit authority for recognizing, through cash awards, the performance of title 38 employees, both nonsupervisors and supervisors or managers.

Our second major concern is that the award limits cover too wide a range. The 5% to 20% (of basic pay) range for the awards that is contained in your bill equates roughly to those awards given to Senior Executives rather than managers and supervisors. We would prefer that the provision not impose a minimum, or that it at least be reduced to 2%, and that the maximum be limited to 10%. These are the limits provided under title 5 for general schedule employees. Furthermore, we believe that there should not be a limit on the percent of personnel receiving such awards. This is consistent with title 5 cash awards for general schedule employees. If, however, it is decided to maintain a limit, we would prefer a cap of 5% (1 out of 20 employees). This would make the awards more meaningful in terms of motivation or acknowledgment. In our view that would make the award provision more equitable and more reasonable from a cost standpoint. Finally, if this legislation were enacted, we would require sufficient time to review the existing proficiency rating system for title 38 employees to determine what adjustments will be necessary to relate performance to specific award criteria.

Dependent Care Assistance Program

Section 202 of S. 947 would direct that the Secretary establish what is known as a "cafeteria plan" for employees working in the Veterans Health Services and Research Administration to assist them in meeting dependent care costs. Under such plans, an employer, at the request of an employee, may withhold funds from the employee's paycheck and deposit them in a special account which the employee may then use for paying child or dependent care expenses. Section 129 of the Internal Revenue Code, 26 U.S.C. § 129(a), authorizes employers to exclude funds deposited in such accounts from the gross income of the employee up to $5000 ($2500 in the case of a separate return filed by a married individual). The effect of the cafeteria plan allocation is thus to reduce the employee's federal income tax. It is our understanding, however, that an employee participating in a "cafeteria plan" may not use the tax credit for child care expenses. Employees would have to assess whether the child care credit, or the cafeteria plan, is most advantageous to them from a tax standpoint. Thus, the opportunity to participate in a cafeteria plan may not necessarily be attractive to all employees who would be eligible to participate. As a result, we have no estimates of the tax revenues that Treasury would forego. Nevertheless, we do not object to this section of S. 947.

Leave Transfer and Leave Banks

Section 203 of S. 947 would direct the Secretary to establish a voluntary leave transfer program, and permit creation of a voluntary leave bank program, for the benefit of title 38 health-care employees. S. 899, our proposal which you recently introduced at the request of the Administration, would give the

Secretary discretion to establish a 5-year temporary leave transfer or leave bank program similar to that provided for title 5 employees. We urge adoption of our discretionary provision, S. 699, and oppose section 203 of S. 947.

Under revised OPM regulations, leave transfer programs allow covered employees to apply, based on a medical emergency, for eligibility to use the unused and accrued annual leave of other employees. Medical emergency generally means a medical condition of an employee or family member of the employee that is likely to require the employee's absence from duty for a prolonged period of time, and will result in a substantial loss of income to the employee because of the unavailability of paid leave. Employees who wish to donate leave submit voluntary written requests specifying the amount of leave they wish to donate. The donating employee's account is then reduced by the amount of leave he or she asked to donate and the eligible recipient's leave account is augmented. When the emergency terminates, unused donations of leave are restored to the appropriate donors. Employees may not donate leave to their immediate supervisor or generally give more than half the leave they accrue during the year of the donation.

Under section 203 of S. 947, both the leave transfer and leave bank programs must, if feasible, provide the same or similar requirements and conditions that are prescribed for the leave transfer and bank program administered by OPM. As one means to accomplish its purpose, the section also authorizes the Secretary to enter into an agreement with the Director of the Office of Personnel Management to permit VA health-care employees to participate in the OPM-administered leave transfer and leave bank programs. If the Secretary chooses the latter option to reach an agreement with OPM, he or she need not provide a VA administered program.

Under our proposal, we would anticipate having only a leave transfer program to be used by both title 5 and title 38 employees, which would permit the donation of leave between both groups. We would not exercise authority to establish a leave bank program at this time. Because the banks are administratively cumbersome to operate, OPM is operating leave bank programs on a limited test basis with agencies that volunteer to participate. We believe it would be appropriate to defer any legislation on a leave bank until the OPM pilot projects can be more fully evaluated.

Health Professional Scholarship Program

Section 301 of S. 947 would amend the law authorizing the VA's Health Professional Scholarship Program to provide that inselecting participants for the program, the Secretary shall ensure an equitable allocation of scholarships to persons in the second year of programs leading to an associate degree in nursing. We oppose the provision.

VA currently has educational assistance programs which authorize support to candidates for associate degrees in nursing, making this provision unnecessary. Both the tuition assistance program authorized by title 5 (5 U.S.C. § 4109), and the upward mobility program (MP-5, Part I, Chapter 410, Appendix A), provide such assistance. Moreover, the soon to be implemented tuition reimbursement program (38 U.S.C. §§ 4321 et seq.), will also support associate degree candidates. The Scholarship Program has always been used as a tool to recruit new baccalaureate or masters level nurses into the VA system. This Program coupled with the Tuition Support, Tuition Reimbursement and Upward Mobility Programs, provides for a well balanced spectrum of education programs for clinically focused care givers in VA Medical Centers.

Grants to Affiliated Allied Health Institutions

Section 302 of S. 947 would authorize the appropriation of $5 million in FY 1990 and 1991 and $6 million for each of the following two years for grants to allied health institutions. We do not believe the proposal has sufficient priority to warrant funding at this time. We do not question that this concept may have merit, but we would certainly not seek to fund it at the expense of other more urgent demands on our health care system.

Appointment of Graduates of Affiliated Programs

Section 401 of S. 947 would authorize VA to appoint graduates of affiliated "allied" clinical health-care education programs to competitive civil service positions without regard to competitive civil service procedures. We would support this provision with revisions to preclude departure from merit principles by ensuring that only qualified persons are hired.

Under our statutory health-care education mission, we operate clinical education programs in our facilities which annually train approximately 50,000 students in allied health-care occupations, including psychology, social work, audiology, speech therapy, dietetics and recreational therapy. Yet, the complicated and often lengthy civil service process discourages many highly-qualified allied health-care graduates of VA-affiliated clinical education programs from taking jobs with the VA. By the time these graduates complete the process for placement on a civil service register, and are certified to the VA, other health care employers have often already hired them. As a result, we lose potential employees who are already VA-trained. We are currently experiencing staff shortages in some of these positions. This proposal would enable us, without jeopardizing merit principles, to directly hire graduates of proven competence, who already are familiar with our methods, without regard to the competitive service certification process. We would support the provision with an amendment requiring VA, by regulation, to establish minimum requirements to be met by applicants hired under a waiver of the civil service procedures. This would insure that only those candidates who are clearly well qualified receive special treatment. We would also recommend that it be expanded to include residents and other trainees in health-care management occupations.

There are no significant costs or savings associated with this proposal. However, our ability to hire these highly-qualified graduates would reduce administrative costs associated with the recruitment, orientation and training of new employees. We favor its enactment.

Pay and Personnel Management Pilot Program

Section 402 of S. 947 would require the Chief Medical Director (CMD) to conduct during calendar years 1990, 1991, and 1992, pilot programs at not less than five VA medical facilities with respect to determining the desirability of various pay and management practices, including those required to be studied by section 231 of Public Law 100-322, relating to the recruitment and retention of registered nurses and other scarce health-care professionals. Specifically, the programs are to include: new alternatives for utilizing the skills and knowledge of registered nurses in furnishing direct-patient care; collaborative-practice committees; and significantly increasing evening and night shift pay differentials. Finally, the bill calls for elaborate reporting to the Senate and House Veterans Affairs Committees both during the pilot program and at it conclusion.

At this time, we have not completed our review of the contractor's report of the study commissioned under section 231 of Public Law 100-322, which addresses such matters as the effects of pay and personnel management practices of VHS&RA on reruitment and retention of health-care employees and the desirability and feasibility of flexible benefit programs. We acknowledge that certain pilot program proposals would provide a test of some of the study findings. We believe it would be appropriate, however, to defer support of further pilot programs until we fully assess the contractor's findings, and determine what the scope of any pilot program should be.

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STATEMENT OF
R. J. VOGEL
CHIEF BENEFITS DIRECTOR
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JUNE 9, 1989

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss several items relating to veterans' benefits: Title I of S. 13; S. 564; the report of the Commission to Assess Veterans' Education Policy; S. 1092; S. 1003; and an amendment to S. 190.

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S. 1092

Mr. Chairman, as you requested, I would now like to provide our views on a bill which you recently introduced along with Senators Murkowski and Matsunaga, S. 1092, the "Veterans Education Policy Improvements Act." While we support certain provisions of this measure and agree in concept with certain others, the VA cannot support enactment of the bill as drafted for the reasons more fully explained in the following analysis.

The first substantive provision of the bill, section 2, would authorize VA work-study students to receive payment for services at the Federal hourly minimum wage, or the applicable State hourly minimum wage, whichever is higher. This section conforms with a VA-proposed alternative to the Education Policy Commission's recommendation for a broader scale approach to such benefits. We support this provision as it would provide the equity sought by the Commission and would advance the purposes of the work-study program.

Section 3 would expand eligibility for the work-study program to include students training under the Dependents' and Survivors' Educational Assistance program (chapter 35). We do not believe chapter 35 recipients should be included in the work-study program. Chapter 35 students, in many cases, qualify for many Government-sponsored financial programs, including the work-study program funded by the

Department of Education. These same programs are not available to veteran-students because their income exceeds the financial criteria established for many Government-wide financial assistance programs.

Section 4 would include service-disabled veterans in training under the vocational rehabilitation program as part of the numerical count for reporting fee purposes. We note that school officials have responsibilities to perform functions pertaining to such trainees that frequently require additional services and assistance by the educational institution. As we stated in our interim report, we will examine the need for the fee in the context of the book-handling fee already being paid to the institutions on behalf of these students.

Section 5 would remove the distinction in attendance-reporting requirements between degree and nondegree institutions. It would also remove the prohibition against the payment of educational assistance allowance for any day of absence in excess of 30 days in a 12-month period. We support this proposal, which conforms to our formulation of the Commission's recommendation in this area, provided the effectiveness of monthly self-certification by eligible veterans is confirmed by our current study and the VA is given the authority to require such self-certification as set forth in section 7 of this measure. If this section is enacted, we will be able to remove our current regulatory requirements regarding effective dates and enrollment periods. Moreover, we would then give consideration to relying on monthly self-certification by veterans of continued pursuit of training in lieu of school attendance reporting.

Section 6 would amend section 1791 of title 38 to repeal the limit on the number of changes of program a veteran-student may make. The VA would be required to approve a second or subsequent program change only if the individual submits to counseling services beyond the initial change of program. We are opposed to the total repeal of the current limitation on the number of program changes. We believe these limitations, first instituted in response to abuses of the VA educational assistance programs during the administration of the World War II GI Bill, remain an important safeguard. We recommend retaining the limits on changes of program and requiring VA-approved counseling for changes of program beyond the initial change.

Section 7 would amend section 1780 of title 38 to provide that all education programs administered by the VA may require monthly self-certification verifying pursuit of training for both degree and nondegree students. The VA is committed to maintaining the integrity of the GI Bill while administering the disbursement of public funds to eligible persons in the most efficient and economical manner. While we endorse this provision, we note that our use of such authority will depend on the results of our current study of chapter 30 self-certification.

Section 8 of the bill would provide that difficulties beyond the control of the student in making or changing child-care arrangements is a mitigating circumstance to excuse an individual who has withdrawn from a course. As noted in our response to the Commission's recommendation on this issue, we agree that changes in child-care arrangements can and should be considered a mitigating circumstance for course withdrawal. However, since current VA policy and procedure already reflect this posture, we find this legislative proposal unnecessary. Noting the concern of the Commission, as well as the apparent concern of this Committee on this issue, we would here reiterate our intent to amend our mitigating-circumstances regulation in the manner suggested in our interim report so as to confirm and clarify our existing policy.

Section 9 of the bill provides that the effective date of a benefit adjustment based on a change in a student's course load or other change would be the date the change occurred, instead of the end of the month in which the change occurred. We support this provision in the context of implementation of the self-certification procedure as discussed in our comments on section 7 of this bill.

Finally, section 10 of this measure would make two changes in the Montgomery GI Bill Selected Reserve (chapter 106 of title 10) program. First, it would modify the criteria for determining waivers of the "two-year" rule and the "85-15" rule for certain courses provided under contract with the Department of Defense to include reservists training under chapter 106. We do not object to this statutory clarification of congressional intent. Second, section 10 would make chapter 106 trainees eligible for the work-study program. The VA does not support this proposal. As pointed out by the Commission in its report, the effectiveness of the work-study program in its current form is suffering from a general lack of participant interest. Thus, adding more eligible individual's who are already gainfully employed does not appear to be a solution.

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STATEMENT OF
JOHN A. GRONVALL
CHIEF MEDICAL DIRECTOR
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES SENATE
JUNE 14, 1989

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss a number of legislative proposals primarily related to the care, treatment or study of veterans with mental illness disabilities. Specifically, the various proposals would expand VA compensated work therapy programs aimed at chronically mentally ill veterans, address issues associated with post-traumatic stress disorder, extend VA's homeless chronically mentally ill program, and authorize VA to create mental illness research, education, and clinical centers (MIRECC'S). Although unrelated to mental health issues, you also asked that we comment on your proposal to transfer supervision of the security and law enforcement functions at VA medical centers from the facility directors to the Assistant Secretary assigned management, productivity, and logistic support functions.

MIRREC'S -- (S. 86)

S. 86 would call for the establishment and operation of up to five VA health care facilities as centers for mental illness research, education, and clinical care (subject to the appropriation of sufficient funds for that purpose.) This bill is substantially identical to a provision in S. 2011 as passed by the Senate last year.

As we stated in testimony before the committee one year ago, it is not clear that VA needs a statutory basis to start up such a "MIRECC" program. Also we oppose language that would require establishing an automatic priority for any category or source of research proposals, as this measure proposes.

We estimate that establishing the MIRECC program contemplated by this bill would entail costs of $3.1 million in Fiscal Year 1990 and $20.9 million over four fiscal years.

HCMI PROGRAM -- (S. 405 & S. 846)

Both S. 405, and section 3 of S. 846, would extend the authorization for VA's program for providing community-based contract care and rehabilitative services for homeless chronically mentally ill (HCMI) veterans. Among its provisions, S. 405 would extend the program for three years, until September 30, 1992, and would include chronically mentally ill veterans who have service-connected disabilities rated at least 50% within the scope of program eligibility. Those individuals were accorded eligibility when Congress first authorized the program in 1987. S. 846 would simply extend the program authorization for five years. Although we would not oppose the enactment of S. 405, considerations of program continuity -- eliminating some of the uncertainty regarding the program, and the attendant difficulty of recruiting and retaining staff -- makes a five-year extension of this successful pilot a more desirable option.

The HCMI program had its genesis in Public Law 100-6 in 1987. The program is currently authorized by section 115 of Public Law 100-322, and funding was most recently authorized by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Public Law 100-628. Although we have operated the HCMI program for less than two years, it has had noticeable successes, assisting in the rehabilitation of chronically mentally ill veterans in some 43 different locations. Outreach teams, usually consisting of two health care professionals, make contact with individual veterans wherever they may be living in the community, often on the streets and in shelters. They initially establish eligibility and then take the veteran, if willing, to a VA health care facility for a complete physical and mental health examination and evaluation. If appropriate and eligible, the veteran is placed in a community-based residential psychiatric treatment program pursuant to a contract between VA and the treatment facility. In addition to treatment, emphasis is placed on connecting the veteran to other non-health-care resources in both the VA and in the community at large.

Most veterans entering the HCMI program achieve some of the goals set for them when they enter. Most are discharged from the program with their health care problems stabilized, and they are not homeless. Considering the fact that the program is aimed at an extremely difficult population to serve, the results of the program have indeed been excellent. We support continuation of the program.

VA estimates that continuation of the HCMI program at current operating levels, would cost approximately $13.9 million in Fiscal Year 1990, and $69.3 million over five fiscal years.

COMPENSATED WORK THERAPY -- (AMENDMENT TO S. 13 & S. 846)

Mr. Chairman, I turn next to two measures directed at enhancing our authority to rehabilitate patients, particularly chronically mentally ill veterans, through work-for-pay programs. Therapeutic work experiences have proven to be beneficial to those patients' physical and mental health, and they can be critical to helping them make the transition from institutional care to independent living in the community. Both your amendment to S. 13, and S. 846, would broaden our authority to conduct compensated work therapy (CWT) programs. We support those provisions. Both measures would also facilitate the development and operation of so-called "therapeutic residences" to provide transitional housing for patients in those compensated work therapy programs, but they represent different approaches. We would support legislation that provides the basis for a therapeutic residence pilot program. Although your amendment to S. 13 contains several creative, very helpful concepts, we have some fundamental concerns about the bill. The provisions of S. 846, in our view, would provide us with greater flexibility to design workable programs, and we support it.

Both measures would authorize VA to provide therapeutic work opportunities in our own health-care facilities, and through arrangements with other government installations. Existing law authorizes us to obtain work agreements only with private businesses and other non-federal sources outside the VA. There are many opportunities for work in VA and other federal agencies, however, and allowing patients to perform this work can be very beneficial, particularly in those locations where, due to the small size of the community, work opportunities with private business sources are simply unavailable. Thus, we support these provisions.

S. 846 would authorize the Secretary to establish therapeutic residences to serve as transitional housing for veterans who are participating in VA's compensated work therapy or incentive therapy programs. Only participants in those programs, and a house manager, could live in such facilities. Each veteran would be required to pay rent, and homeless veterans would be given priority for spaces in the home. The bill would authorize VA to use monies in the Special Therapeutic and Rehabilitation Activities Fund (STRAF) to acquire and operate the residential housing, and all rents paid by veterans would be placed in the same fund. It would also authorize use of houses already owned by VA as a result of defaults on loans guaranteed or made under our home loan program, provided funds are transferred from the STRAF to the Loan Guaranty Revolving Fund to pay for such properties. Although S. 846 provides authority to purchase properties from HUD as well as VA, we would certainly give preference to purchasing our own properties. This would eliminate the possibility of having to dispose of HUD properties in the event the house was no longer needed.

S. 846 would also permit us to to enhance our work-for-pay programs and provide funds for the therapeutic residence program through creation of nonprofit corporations. Similar in concept to the nonprofit research corporations authorized by Public Law 100-322, the corporations could serve the VA as a vehicle for procuring and administering compensated work therapy contracts, and as flexible funding mechanisms, soliciting and administering donations from private and nonprofit sources to support the therapeutic residence program. In particular, we anticipate being able to receive funds from nonprofit organizations that are currently unable to make donations to Federal programs. The bill would permit transfer of funds obtained by such corporations into the STRAF. It is not our intent that the nonprofit corporations would borrow funds from commercial lenders. We expect that STRAF funds as well as private donations and rental payments would be adequate to purchase outright the number of houses needed for this program.

Mr. Chairman, if S. 846 were enacted, we would anticipate implementing its therapeutic community provisions on a relatively small scale using funds in the STRAF. Our initial goal would be to ascertain whether establishing such "therapeutic residences" assists chronically mentally ill veterans to make the transition from institutional care to independent living in the community. The proposal appears to have potential to achieve that goal and to do so in a very cost-effective manner. Establishing such therapeutic communities would allow VA to rehabilitate patients by assisting them to learn independent living skills at the same time that they are participating in a work-for-pay program. It is well established that giving patients structured work activity, and requiring them to take on responsibilities like paying rent (presumably using funds earned in the compensated work therapy program) can be invaluable rehabilitative experiences, and provide them a basis to provide for themselves. Moreover, the use of rent payments would provide partial support for operating the residence. The VA medical centers that will become sponsors of the programs will provide assistance within their available resources. As a result, we do not expect this program to increase costs. Thus, we support S. 846 with some modifications.

We would prefer to conduct a program as a three to five-year pilot at ten to twenty-five sites, and then evaluate the program before proceeding any further. We suggest that the bill be amended to reflect this. Moreover, we recommend that you delete section seven requiring a transfer of funds from the VA medical care appropriation. As I stated earlier, VA anticipates implementing the program on a small scale using STRAF funds. We prefer to maintain our resources in medical care for the pilot program on the chronically mentally ill.

Your amendment to S. 13 takes a different approach. It would mandate the establishment of a pilot program which would rely entirely on nonprofit corporations (to be established at the initiative of VA officials) as vehicles for not only the creation, ownership and operation of the residences, but also for the conduct of compensated work therapy programs. Although the amendment to S. 13 seems aimed at creating a therapeutic residence program operating independently of VA resources, the model invites reliance on VA staffing and expertise, as well as VA financial support. Moreover, the proposal contemplates a fundamental change in VA's CWT program. Although the measure has many positive elements, it is not clear that it is a cost effective method for conducting CWT activities, or operating therapeutic residences.

Your amendment would direct creation of a five-year pilot program under which VA would "encourage and participate" in the creation of nonprofit corporations which would conduct CWT programs for VA, and at the same time operate therapeutic residences for veteran patients who are participating in CWT programs. Under the proposal, VA would enter into contracts with nonprofit corporations to conduct CWT programs on our behalf. The corporations would procure and enter into contracts with businesses in the community for work for patients, transport patients to worksites if necessary, pay patients, and obtain materials necessary for work. In short, the corporation would do whatever is necessary to operate a CWT program.

A condition of all contracts would be the corporation's agreement to operate a "therapeutic residence" for patients participating in CWT programs. VA would provide the corporation with initial financial assistance in obtaining the residence either through a loan (up to 25% of the cost, or one year's rent), an advance payment on the contract, or by providing a house which VA has obtained through foreclosure on a loan made or guaranteed by VA. The corporation would be required, however, to pay back the loan, or pay for the use of the home VA provides.

The amendment would authorize VA to assist the nonprofit corporation in the purchase or lease of a therapeutic residence by making advance payments on the contract for CWT services, The bill would require contract safeguards to assure that VA recoups any funds it has loaned or advanced in the event the house ceases to be a therapeutic residence. Funds to be advanced or loaned to the corporation would be placed in escrow until the corporation is able to demonstrate that at least 25% of the operating expenses of the therapeutic residence, except for amounts veterans pay in rent, can be met with funds obtained from non-VA sources. The measure provides authority to transfer funds in our General Post Fund to the STRAF for use in making loans or advance payments.

Under the pilot, VA would also lease 10 houses obtained through foreclosure, to participating corporations for use as therapeutic residences. In return, the corporation must pay VA 60% of all rents it collects from patients living in the residence to reimburse the Loan Guaranty Revolving Fund. If and when the lease is terminated, the house would return to VA for ordinary disposal under the loan guaranty program.

Mr. Chairman, we applaud the innovative approach reflected in this measure and the concern you expressed that this legislation not add to the fiscal and recruitment pressures under which VA has been operating. However, although our opportunity to study this complex bill in depth has been limited, it is clear that the bill's reliance on nonprofit corporations does not render it "fiscally neutral."

First, we note that the bill's fiscal underpinning is the requirement that VA contract with nonprofit corporations to run VA's CWT program. Thus, VA is to pay the nonprofit (the bill does not specify whether from the STRAF or from medical appropriations) to carry out programs VA medical centers have been operating effectively for years. CWT contracts have yielded monies which have enabled the STRAF to grow, thereby providing funds for establishing new rehabilitative projects; such funds would not inure to the STRAF under the bill. The bill also provides that VA, as partial payment under the contract, may provide the corporations a broad range of in-kind assistance. It does not appear that the corporation would have to make much use of the employment authority provided for in the bill, in light of the in-kind assistance it can obtain from VA. VA would, in fact, subsidize the corporation's start-up and operations in several respects, as described above.

Thus, the bill makes it altogether possible, if not likely, that the corporation would be highly dependent on VA and VA resources, while at the same time it would be beyond VA's authority to control. This is particularly troublesome in connection with its proposed role of running a VA program -- compensated work therapy. We are concerned that VA would, in effect, be contracting out the management of a VA program largely to fund the operation of therapeutic residences. This change would have substantial implications, not the least being the depletion of the STRAF as a source of support for CWT programs outside this pilot.

We agree that it would be desirable to have nonprofit corporations play a role in establishing therapeutic residences. We do not believe that the amendment to S. 13 provides the most effective vehicle to achieve that end, however. We recommend that VA be given the more flexible authority proposed in S. 846, consistent with the amendments we have recommended, to develop pilot or demonstration therapeutic residence projects. If those efforts prove successful, they offer the best promise, in our view, of providing models for the private sector to emulate.

POST-TRAUMATIC STRESS DISORDER -- (S. 13 & S. 192)

Mr. Chairman, there are four proposals before you which address different issues associated with post-traumatic stress disorder.

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PTSD Study of Certain Ethnic Groups

Section 203 of S. 13, and S. 192, would direct VA to conduct a study of the prevalence and incidence of post-traumatic stress disorder (PTSD) and other psychological problems among Asian-American, American-Indian, Native-Hawaiian, other Native-American Pacific Islander (including American Samoan Native), and Alaska Native Vietnam veterans, and of the effects of those problems on these veterans. The bill would require that particular attention be given to women veterans and disabled veterans. It would also require that a report containing the results of the study be submitted to the Veterans' Affairs Committees of Congress by October 1, 1991. We oppose this provision.

The recently-completed National Vietnam Veterans Readjustment Study has given VA much insight regarding the prevalence and incidence of PTSD and other psychological problems resulting from service in Vietnam. That study included Native American veterans in its samples and provides valuable new information. However, we believe it would not be cost-effective to conduct a similar study focused solely on a particular subgroup or groups. Special sampling techniques were used in the National Vietnam Veterans Readjustment Study to gain information on specific cultural and racial groups, e.g., Blacks, Hispanics, women, and the disabled. Although the proposed study could yield some new data, we believe that the findings of the recent study are applicable to Native Americans and other groups.

Based on what we have already learned about the incidence and prevalence of PTSD, we do not believe the proposed study is needed to assist us in responding to these veterans' clinical needs. Weighed against competing demands for funding, the proposed study would not be a cost-effective undertaking.

We also would anticipate difficulties in using special sampling techniques to determine the prevalence and incidence of psychological disorders among subgroups of women and disabled veterans in the larger group of Native American veterans specified in this legislation. The size of those subgroups is so small that obtaining an adequate sample size to gain valid data may not be possible. Finally, designing and conducting the proposed study and reporting its results to Congress by October 1, 1991, would be very difficult and may well increase the cost of such an undertaking.

We estimate that enactment of section 203 would result in costs of approximately $1.7 million.

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ADDITIONAL VIEWS OF SENATOR ALAN CRANSTON

VA MEDICAL CENTER SECURITY

Section 701 of the Committee bill, which is derived from section 221 of S. 13, would add a new subsection to section 218 of title 38, under which functional and technical supervision of the performance of security-force functions would be delegated to the Office of the Secretary, and would require a report from the Secretary containing his plan for upgrading the training, recruitment, retention, staffing, pay, and protection afforded VA's security personnel.

I have long been concerned about possible problems associated with VA's security force. On a daily basis, VA security personnel are responsible for protecting about 203,000 employees, 126,000 patients, all visitors, and government property at 172 medical centers valued at about $7 billion.

During fiscal year 1988, approximately 578,000 offenses reportedly occurred at VA medical centers resulting in a loss of about $7.7 million (which includes Federal and personal property loss). The offenses occurring ranged from the most violent—including assaults with a dangerous weapon and rape—to the more mundane issuance of traffic violations. Collectively, the spectrum of VA offenses reported reflected a microcosm of crimes occurring in American society today.

In view of the number of offenses being reported and the dollar loss associated with those offenses, in May 1989, I initiated an investigation (conducted by a staff member temporarily detailed from the General Accounting Office) of VA security-force problems. This investigation included the transmittal to VA of extensive Committee questions and follow-up questions on June 13 and August 10, 1989, respectively, visits to various medical centers' security services, and a June 22, 1989, Committee hearing.

The staff investigation and the hearing have raised concerns whether VA security personnel are adequately prepared for their job of preventing medical facility crimes. The emerging picture of VA security personnel is one of a workforce which is likely underpaid, inadequately trained, understaffed, and improperly armed or protected. The result is that an unusually high number of VA security personnel leave for better positions, only a small percentage of VA medical facility crimes are reportedly solved, and security personnel are needlessly placed at risk in the performance of their duties.

A principal cause of VA security force problems is the lack of strong management oversight of and resources for the security-force program. This lack of oversight and resources exists both at the VA Central Office (VACO) as well as at the individual medical facility level. Both levels of management can and do affect security operations and both must share the responsibility for the inadequacies in VA's security force.

At the VACO level, the Office of Security Service under the Veterans Health Services and Research Administration (VHS&RA) is responsible for security-force matters. With a staff of 2, this office, among other things, develops policy, determines training needs, directs medical facility security program evaluations, and oversees the activities of about 1,800 VA security personnel.

In order to determine whether the VACO staff had effectively discharged its responsibilities in the case of the only 2 incidents involving fatalities to VA security personnel, I felt the Committee needed to carry out its own investigation of these incidents. The principal emphasis of that investigation was to determine if each incident had been thoroughly evaluated (from a "lessons-learned" point of view) and, based on any such lessons-learned, the extent to which VACO Security Service had taken all necessary corrective action.

Brecksville VAMC Incident: The first incident involving fatalities to VA security personnel occurred at the Brecksville, Ohio, VA medical center (VAMC) in January of 1986. During a routine stop and question on VAMC grounds, 2 Brecksville VAMC security personnel were fatally shot by a former patient of the center. After the shooting, the assailant fled into one of the nearby medical facility buildings and was subsequently apprehended by VAMC and City of Brecksville police.

The subsequent VA investigation of the shooting determined that, under the circumstances, the deaths were not preventable. Somewhat inconsistent with that determination, the investigation also concluded that it is unclear whether or not a protective vest could have saved one of the officer's life. Nonetheless, VACO Security Service issued, over the signature of the Chief Medical Director, a letter to all VHS&RA facilities describing the events and reaffirming existing law enforcement policies.

In testimony given at the committee's June 22 hearing, the Acting Director, VACO Security Service, agreed that it is possible that one of the two officers might well have survived if the officer had been wearing a protective vest. Given that such a possibility exists, further action by VACO Security Service to seek to protect VA security personnel better in the aftermath of the incident seems now to have been warranted.

Another unfortunate aspect of this incident is evidence that medical facility management had denied a security unit request for protective vests a few months before the fatalities occurred. A prudent course after the deaths could well have been to caution all VHS&RA facilities against denying security unit requests for protective vests. This was not done.

Bronx VAMC Incident: The second incident involving a VA security personnel fatality occurred at the Bronx VAMC in the summer of 1988. At that center, a security officer—while operating a walk-through metal detector alone—attempted to detain an individual who had activated the detector's alarm. A scuffle ensued during which a second individual approached the officer from behind and shot him to death. Both individuals involved in the shooting immediately fled medical facility grounds and to date remain at-large.

The subsequent VA investigation of this shooting determined, as with the Brecksville VAMC incident, that the death was not preventable. The investigation also concluded, among other things, that the officer that was killed probably would not have been able to defend himself even if he were armed. Although no advisory letter was issued, VHS&RA's Director of Administration testified at the June 22 Committee hearing that the details of the Bronx VAMC incident were discussed with the directors of all VHS&RA medical facilities during a normal Friday conference call.

The Committee staff investigation of this incident discovered more questions than answers. Among those questions were: Why was the officer who was killed wearing a protective vest he had purchased for himself (out of his own funds)? Why hadn't the Bronx VAMC purchased protective vests for the officer and others prior to the shooting? What type of protective vest was worn by this officer? Might a protective vest of a different design or quality possibly have saved this officer's life? What type of protective vest does VA recommend for police officers? None of these questions were apparently asked or answered by the VA investigation.

Of foremost concern to me, however, were the questions of, first, why was the officer, contrary to VA policy, operating the walk-through metal detector alone, and, second, would the presence of another officer also operating the detector somehow possibly have averted the killing. I found the VHS&RA answers to those questions at the June 22 hearing disappointing.

According to testimony given by the Acting Director of VACO Security Service, he discussed such questions with the security chief at the Bronx VAMC sometime after the shooting. Because the Bronx VAMC has a high turnover rate, the Acting Director said, the security unit there was not able to staff the metal detector with the minimum of 2 people, as required. The Acting Director also commented that it is difficult to answer whether another officer also operating the detector could have averted the killing. Despite this he said he suspected that there was still only one officer being used at the Bronx VAMC to operate the metal detector there.

Committee staff investigative contact with the security chief at the Bronx VAMC confirmed that a single police officer is still asked at times to operate the metal detector. VA witnesses appearing at the hearing were asked what action VA had taken to survey all VHS&RA facilities to see whether or not they were properly following the policy of having 2 officers at metal detectors. The VHS&RA Director of Administration responded that VACO made no attempt to survey all VHS&RA facilities. He added that VA operates a decentralized system. In that regard, the Director said, VACO advises "the directors of the hospitals of what the rules and policies are and we would like for them to follow them." In my view, such action or, in this case, lack of action raises serious questions about VHS&RA's capability or willingness to oversee the security program properly.

At the VAMC level, facility management is responsible for directing day-to-day security operations. The staff investigation by the Committee disclosed that, although direction was being given, performance was not being evaluated. Medical facility management, for instance was usually not evaluating the level of crime cyclically occurring at the facility or the percentage of crimes being solved. Without this evaluation, medical facility management, in the Committee's view, has no way of knowing whether security is adequately doing its job.

Based on Committee investigative visits to the Allen Park, Indianapolis, Kansas City, and Bonham VAMCs, there are several vehicles by which medical faciltiy management can better monitor security-force performance. Under VACO guidelines, the security service chief is expected to give medical facility management a briefing, on an annual basis, on security-force operations. Also, on an annual basis, facility management is expected to evaluate the security service chief's performance. On a triennial basis, the center's personnel office is expected to conduct a personnel management evaluation of security-service activities.

The staff investigation found that none of these checks was functioning as expected. Of the VAMCs visited, only the annual management briefing prepared by the Kansas City VAMC security chief showed both the level of crime occurring at the center and the number of successfully resolved cases. Conversely, the Indianapolis VAMC security chief had not prepared an annual management briefing since 1987.

The staff investigation also showed that the performance evaluation of VAMC security chiefs did not consistently use an assessment of security activities as a basis, in part, for analyzing the chief's performance. For instance, the performance evaluation of the Allen Park VAMC security chief assessed the chief's skills in dealing with such matters as resolving internal employee problems and reducing employee sick leave. Although each of these areas are worthy of evaluation, assessment of them tells little, for example, about the level of crime being experienced at the medical center relative to the FBI crime index for the area in which the center resides. Because of that, Allen Park VAMC management told the Committee investigator that it assumed that the level of crime at the center was low relative to the area. VA statistics for fiscal year 1988 reveal, however, that the Allen Park VAMC ranked ninth nationally in the number of crimes occurring at a VAMC while supposedly residing in an area low in crime.

The staff investigation showed further that personnel management evaluations of security units were not being conducted when due. For instance, the Bonham VAMC had not conducted such an evaluation since 1986 and the Kansas City VAMC had not conducted a similar evaluation since 1982. In the last Kansas City VAMC evaluation, the personnel office noted that police supervisors had not completed required in-service training. I, therefore, have asked in its August 10 follow-up questions to VA whether that required training has since been provided and, if so, when.

Recruitment and Retention.—In its September 30, 1988, report entitled "Audit of Hiring Practices of VA Police Officers", the VA Inspector General's officer evaluated hiring problems confronting the security program. The report found that 57 percent of VA police officers surveyed were either unqualified, unsuited, or both, for their current positions, including 21 police officers who did not disclose prior criminal convictions on their application for VA employment. The report, therefore, included recommendations for improving preemployment screening of police officer applicants, for making a suitability review of all police officers currently on duty, and for designating police officer positions as noncritical-sensitive for background screening purposes.

In view of the comprehensive nature of the Inspector General's report, the staff investigation focused its effort on examining the status of VA actions to implement the Inspector General's recommendations and the impact of those actions once implemented. This effort concluded that, although the Inspector General's recommendations are warranted, implementation action on one recommendation has been slow and action on another may further add to the lengthy time it takes to hire qualified candidates for the security-service program.

For instance, according to VA, background checks on all current VA police officers have not been completed yet. VA indicated that of 1,802 office positions, 1,354 investigations have been returned by the Office of Personnel Management (OPM) and 448 are still pending OPM review. For the nearly one-quarter of the current VA police officers still awaiting OPM action, VA indicated that there may be various reasons for the delay. One reason offered by VA is that unclear fingerprints may have had to be returned to VA field facilities for reprinting while slow responses from previous employers who were contacted by VA may account for other delays. In VA's estimation, all background checks should be completed by late summer 1989. To the extent that becomes true, approximately 1 year will have transpired since the Inspector General's office had completed its report. I believe this is an unacceptably long time to review the background of current VA police officers, given the findings of the Inspector General regarding the prevalence of undisclosed arrest records.

At its June 22 hearing, then I questioned security chiefs from the Kansas City, Dallas, and West Los Angeles VAMCs on the relative difficulty associated with hiring new VA police officers. All 3 chiefs said it is extremely difficult to find qualified candidates for the position. Once such candidates are found, the chiefs added, there is usually a time lag of 2 to 4 months from when they are selected to when they report to duty.

Salaries.—VA-supplied information indicated that 48 VAMCs, or more than one quarter of the VAMCs nationally, had a turnover rate of 25 percent or more in its security force for fiscal year 1988. Thus, Committee investigative visits to the Allen Park, Indianapolis, Kansas City, and Bonham VAMCs attempted to learn whether any of those centers had a high turnover rate and, if so, what were the reasons for that high turnover and what were the centers doing to curb the rate.

Of the 4 VAMCs visited, turnover was greatest at the Allen Park and Indianapolis VAMCs. At the two, security chiefs there reported for 1988 a turnover rate of 50 percent and 56 percent respectively. The reason given for the high turnover was generally inadequate pay. At the Allen Park VAMC, facility management reported that security personnel at nearby private hospitals received about $3,000 more than the salary received by VA security personnel. At the Indianapolis VAMC, facility management reported that security personnel at nearby private hospitals, local sheriff's departments, and local public schools received nearly $4,500 more. Because of the salary disparity, both VAMCs have submitted requests for special pay (authorized by section 4107 of title 38) to provide pay competitive with the pay for the same category of personnel at non-Federal facilities in the same labor market.

Further staff inquiries disclosed that, at the time of the site visits in May 1989, neither request for special pay had received VACO approval. As of that date, the Allen Park VAMC request for special pay had just been submitted while the Indianapolis VAMC request for special pay had been submitted and pending at the office of the VA Regional Medical Director since December 1988. In its August 10 follow-up questions to VA, I inquired as to why the Indianapolis VAMC proposal for special pay has been pending so long. Also, I inquired as to what other VAMC security units have special pay requests pending and the status of those requests.

Unrelated to special pay, the Committee additionally examined whether security personnel were underpaid relative to other personnel with comparable duties and responsibilities within VA's system. According to VA, at only about 60 VAMCs nationally is security classified as a Service and there the security chief is either the lowest or one of the lowest graded service chiefs. I believe such comparative pay structuring diminishes the security chief's standing at the medical center level and hinders efforts to recruit and retain highly qualified individuals for the security chief position. Therefore, in my August 10 follow-up questions to VA, I asked what plans VA has to analyze and possibly raise the GS-grade of its security chiefs.

Training.—During its investigative site visits, I received evidence that police officer training may not be sufficiently comprehensive or be of sufficient duration to prepare police officers for the job they are asked to do. Consequently, at the June 22 hearing, I asked security chiefs from the Kansas City, Dallas, and West Los Angeles VAMCs to comment on the adequacy of VA police officer training.

Each chief testified that the VA police officer training course did not adequately cover several aspects of law enforcement and, because of that, should be expanded. Those aspects mentioned included handcuffing, making arrests, search and seizure, and new trends in criminal justice. In view of such elements as these being inadequately covered in the training course, the chiefs from the Kansas City and Dallas VAMCs recommended that the course should be extended from its present length of 8 days to a minimum of 8 weeks.

The Department of Justice had also been in favor of extending the length of VA police officer training. Pursuant to the consultation requirements of section 218 of title 38, the Assistant Attorney General for the Criminal Division in a June 13, 1985, letter indicated that the training seemed appropriate but, he did not believe that the then 5 days of training was an adequate amount of time to prepare newly-hired officers to be effective law enforcement professionals. Accordingly, he urged that it be extended to a maximum of 4 weeks. The then Director of VACO Security Service responded that budgetary limitations precluded lengthening the training course but that greater attention to police applicant hiring, in part, should compensate somewhat for the relatively short training period. As it turns out, according to the Inspector General's report, adequate attention was apparently not given to VA police officer hiring, thus, increasing even more the need for additional training.

Staffing.—Because of the specific circumstances of the Bronx VAMC incident, the possibility cannot be dismissed that, if a second officer were on duty at the detector, that fatality might have been averted. Despite that, because of recurring personnel shortages, the Bronx VAMC has continued with virtually no staffing changes in its metal detector operation.

At the Committee's June 22 hearing, I asked the three security chief witnesses to comment on any staffing shortages relative to their centers. Each security chief commented the he did not have enough officers at his center to police the facility adequately. For instance, the Kansas City VAMC security chief said he now has 14 officers but needed 4 or 5 more and the Dallas VAMC security chief said he now has 18 officers but had planned for a minimum of 4 additional officers and probably could use even more than 4.

Staff investigative visits to the Allen Park, Indianapolis, Kansas City, and Bonham VAMCs confirmed the possibility of police officer shortages. At each, security chiefs commented that additional police officers were most definitely needed. For instance, security chiefs at the Indianapolis and Bonham VAMCs commented that, during certain duty shifts, only a single police officer is on duty. This raises the questions of who would be considered that officer's backup and how, when a single police officer on duty needed a backup, could the officer be expected to contact that backup, especially if the officer were already engaged in a life-threatening or emergency situation.

Therefore, in August 10 follow-up questions to VA, the Committee asked which VAMCs have only one police officer on duty at a time and, for each so identified, why having one police officer on duty at a time is consistent with VA policy and, where it is not consistent with VA policy, what changes in staffing are planned.

Protection.—One of the perplexities associated with the unfortunate police officer fatalities occurring at the Brecksville and Bronx VAMCs is that, while both centers are known to be in high crime areas, at the time of the fatalities the Brecksville VAMC police officers were not wearing protective vests and the Bronx VAMC police officer was wearing a protective vest that he had purchased for himself. Thus, the staff investigated the protection typically provided all VA police officers.

According to VA, protective clothing is not a part of the police officer's standard dress. However, protective clothing, including vests, may be procured and issued based on a local VAMC management decision. VA indicated that the criterion for the purchase of protective vests is an assessment that a high possibility exists that officers may be weapon-injured at any time during the course of their duties. This assessment is based upon hostile experiences which have occurred and the likelihood that they may recur at any time. The staff investigation yielded much inconsistency in the application of this criterion.

According to VA-supplied information, 66 VAMCs have purchased protective vests for use by their police officers. Of that number, 45 are located in high-crime areas while 21 are not. VA also indicated that, at 8 VAMCs, the centers use walk-through or portable metal detectors to interdict the introduction of dangerous weapons but have not purchased protective vests for their officers' use. VA has also indicated that at 33 (of the 66) VAMCs that have purchased protective vests for their officers one or more of the officers were not wearing the vests.

During the June 22 Committee hearing, the Security chiefs from the Kansas City, Dallas, and West Los Angeles VAMCs were unanimous in their belief that operation of a metal detector was a high-risk activity during which the wearing of protective vests was needed. The Deputy Secretary of Veterans Affairs also testified at the hearing that there was a need for protective vests and that VA was going to purchase the vests and see to it that police officers wear them.

In my August 10 follow-up questions to VA, I inquired whether VA plans to require all VAMCs in high-crime areas to purchase protective vests for their police officers and how VA plans to ensure that police officers wear protective vests where they have been purchased for them.

Weaponry.—Seventy-eight, or about 45 percent, of VA's 172 medical centers are located in high-crime areas. Because of that percentage, the possibility that a police officer might become engaged in a life-threatening or emergency situation cannot be ignored. In view of that possibility, the Committee examined the weaponry available for police officer's use.

Currently, the standard weaponry for all VA police officers is MACE. Additional weaponry cannot be issued unless specifically authorized by the Chief Medical Director or the Secretary. Requests for additional weaponry are initiated at the individual medical center level and forwarded to VACO for approval. Only the nightstick, as an additional weapon, has been approved, in limited situations, for police officers' use.

VA's criterion for approving the use of a nightstick is the ability to document incidents of assaults or threatening behavior against police officers. Applying this criterion, VACO has approved 9 and disapproved 1 VAMC nightstick requests. Of those 9 centers receiving nightstick approval, 7 are in high-crime areas and 2 are not. In contrast, the one center known to have been disapproved for nightstick use—the Salt Lake City, Utah, VAMC—is situated in a crime index area that is higher than any of the 9 VAMCs receiving approval for nightstick use.

In view of the relatively low number of VAMCs receiving nightstick approval, the Committee consequently queried VA on the known effectiveness of MACE. According to VA, MACE has consistently yielded positive results. Substantiating that contention, VA said it reviewed reported uses of MACE on file for the 6-year period ending June 15, 1989. That review showed that MACE was used in 270 incidents in reaction to serious assaultive situations and was effective 215 times.

Somewhat questioning, however, the relative effectiveness of the MACE was the VA's official investigative report on the Brecksville VAMC shooting. According to the report, Brecksville VAMC police officers after the shooting stated that MACE is ineffective against "highly-disturbed" individuals. The report recommended that the following alternatives should be explored for possible utilization in high-crime areas: (1) new, more effective MACE weapons, (2) stun guns; and (3) a "two-tiered" security force under which exterior guards were armed with firearms or stun guns and interior guards were armed with MACE.

The staff investigation has found no evidence that the report's recommendation was acted upon, and in my August 10 follow-up questions I asked what specific VA consideration was given to the alternatives cited in the Brecksville VAMC investigative report and what were the results.

Physical Security.—A retrospective examination of the Bronx VAMC shooting revealed that while some VAMCs have metal detectors other VAMCs do not. Consequently, the Committee asked what specific criteria exist to authorize the use of metal detectors and which VAMCs have them.

VACO responded that any approval or disapproval of walk-through metal detectors is made as a part of the Central Office approval process through the Office of Acquisition and Material Management. The criterion used for approval, when reviewed by the Director of VACO Security Service is whether the medical center can indicate a demonstrated need for the device. An example would be an increase in the number of confiscated weapons. The decision to purchase and use portable metal detectors, VACO further responded, is left to each medical center which individually determines such a need.

Using the aforementioned criteria, VA indicated that 35 VAMCs had metal detectors in use (8 use walk-through detectors, 30 use portable detectors, and 3 use both). Of that number, 20 VAMCs were in high-crime areas and 15 were not. VA also indicated that, of the 20 VAMCs which have reportedly experienced the highest number of assaults with dangerous weapons, 9 do not report having walk-through or portable metal detectors. Further review by VA is obviously needed in this area as well.

Conclusion: I believe that numerous improvements are needed in VA's medical facility security program, and I believe the Committee bill establishes a format for bringing about the needed improvements.

THIRD-PARTY REIMBURSEMENT

VA Retention of Collections: I have grave concerns about the proposal of both VA and the Committee's Ranking Minority Member to permit VA—even for only 2 years—to retain one-half of the amounts it collects as a result of third-party reimbursement rather than requiring these payments to go to the U.S. Treasury, as at present. I strongly opposed this approach during consideration of the legislation enacted in the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, and I continue to believe that legislation to allow VA to retain third-party payments is very ill-advised.

I can understand why it may seem logical and fair, upon initial analysis, for VA itself to keep and utilize the third-party payments for care given in VA facilities. However, in practical and operational terms, the funds collected would not be a source of additional support for the VA health-care system. Rather, it is virtually certain that if VA were authorized to retain these funds VA budget requests and appropriations would be reduced by an amount equal to the amount anticipated to be collected. There is a substantial probability that the reductions would significantly exceed the actual amount collected.

If there were VA retention of some or a portion of third-party reimbursements, the Administration's request for VA appropriations for a coming fiscal year would be reduced by the Office of Management and Budget by the amount estimated to be collected and returned by VA. This is not speculation; it is exactly what OMB has made clear to VA that it would do—most recently noted by the Chief Medical Director in April 12, 1989, testimony before the House of Representatives Committee on Veterans' Affairs. This would almost certainly result in VA being put in the position of trying to provide health-care services at the program level contemplated in its budget request, as possibly amended by the Congress, but having to do so with a reduced appropriations level. VA would thus be forced to depend on its ability to make the collections at the OMB-projected rate in order to make up the difference.

In addition, OMB has consistently overestimated the amount of third-party reimbursements that can be collected. If VA were authorized to keep any of the funds collected, OMB could readily bring about a decrease in VA's overall medical care budget by projecting greater amounts of third-party collections than VA would actually receive. For example, the OMB estimate of third-party payments for FY 1990 is $304 million while VA's own estimate of these payments is only $136 million. If VA were authorized to keep one-half of the money it collects, rather than depositing the entire amount in the Treasury, and it eventually collected only the amount it estimated, total VA funds available for health care for FY 1990 would be decreased by $84 million. Such a result would aggravate an already desperate VA health-care budget situation.

Thus, although I have strongly advocated increased funding for VA health care, I continue to reject the desirability of VA's retaining third-party reimbursements. Ironically, this seemingly "free" money could, and I believe almost certainly would, hurt VA more than it would help. I believe it is noteworthy that the major veterans' service organizations—that have advocated so strongly for increased VA medical care funding—have advised the Committee that they occur with the above analsis.

Hence, far from increasing VA medical care funding, permitting VA to retain collections would likely serve to decrease it, and there is no way that there can be any assurance that this would indeed not happen.

In short, there is no "free" money.

Collecting for Care of Service-Connected Veterans: I also have a number of concerns about the proposal in S. 573 for VA to collect third-party payments for the cost of medical care furnished all service-connected veterans for the care of their non-service connected conditions.

First, for a veteran with a service-connected disability, inpatient treatment is an entitlement and VA need not determine whether the disability being treated is either service connected or the result of an aggravation of a service-connected condition.

Second, in many cases it may be difficult to say with any certainty that a non-service-connected disability is not a result of or associated with a veteran's service-connected injury or disease. This would be especially true for those veterans with a 50-percent or more service-connected disability. We all know that psychological stress can create physical symptoms and disease. Ulcers, migraine headaches, and hypertension are examples of this phenomenon. Additionally, physical stress can create physical symptoms and disease. VA recognizes that vascular—heart and circulation—problems may be the result of limb amputations. These are the most obvious manifestations of the interdependencies occurring within us. Scientists may well eventually discover that a number of non-service-connected disabilities are closely related to service-connected illnesses or injuries.

Third, the additional collections from third-party payers would contribute to the inflationary spiral in health-care costs and would place an unfair burden on insured veterans. Insurance carriers are for-profit entities. Expenses resulting from higher payments to VA would undoubtedly be passed on to those paying the premium, including the insured veterans in some cases. Businesses paying higher premiums would, in turn, pass along these higher costs by charging higher prices for the goods and services they produce or by raising the employee-contributed premium or by both. Moreover, the administrative overhead cost on each side of the collection activity would increase overall costs while contributing not one iota to improving health-care quality.

Fourth, the cost of making the collections can be substantial for VA. Although VA currently bills third-party payers for the cost of some inpatient care, it could collect successfully on a large scale only if provided additional staffing. According to VA, from October 1988 to May 1988, VA collected only 39 percent of its billings. Private-sector hospitals have large staffs or contracts with firms whose responsibility is to send out bills and follow-up with delinquent payers. For VA to match that effort, personnel would have to be transferred from patient-care services or services which support direct patient-care activities, or the billing and collection process would have to be contracted for with an outside vendor. If such a contract or contracts could be entered into at no cost to VA (that is, with the contractor retaining a percentage of collections as its payment), I would have no objection to such a collection process if adequate privacy and other protections were provided.

ALAN CRANSTON.

ADDITIONAL VIEWS OF SENATORS FRANK H. MURKOWSKI AND ALAN K. SIMPSON

VA HEALTH-CARE PERSONNEL

We are concerned about provisions in the Committee bill which (1) require that VA Registered Nurse salaries be competitive with the private sector and (2) require that VA pay an amount equal to 1 percent of basic pay for a nurse who obtains recertification in a specialty.

Recruitment and retention of health-care professional—Especially RN's—is an extremely critical issue. We support most of the provisions in the Committee bill to make improvements in these areas.

However, we cannot support the competitive pay and recertification provisions. Let me explain.

Our main objection to the competitive pay provisions is that it is mandatory. If a medical center director—after conducting the required survey of local nursing salaries—finds that the nurses at his facility are not receiving competitive salaries/benefits, then the director must increase nurses salaries. He/she would be required by law to do so—irrespective of the hospital's financial condition.

—We do not know the cost of this provision. Therefore, we are taking a step without a clear indication about where it will lead us.

—Some proponents say that VA is already paying special rates—so there would be little cost associated with the provisions. If so, it seems to us that this provision will do nothing. Why enact a provision that does nothing?

—If VA hosptials are required to pay, where are they going to get the money? If enacted, VA may have an adequate number of RN's but no support staff, no pharmaceuticals, no other essential elements of operating a quality system. On the other hand, we are also concerned that it may serve to reduce the number of RN's in the system, because VA could not afford to pay the required salaries. Instead of hiring RN's, VA would increase the number of nursing assistants and licensed practical nurses.

With regard to recertification, we just don't think that this is the best use of limited resources. According to some VA officials and nurses—both in and outside VA—this is not really an effective recruitment and retention tool. When we have limited resources, we question requiring VA to spend $1 million in this manner.

Finally, we understand that we should receive VA's recommendations on recruitment and retention in the near future. Before we take these major steps, we believe we should consider VA's recommendations.

PREVENTIVE HEALTH-CARE SERVICES

We are opposed to the provisions in the Committee bill which would (1) expand entitlement for preventive health care services to all Category A veterans, (2) require VA to offer each of these veterans a minimum of 2 preventive health care services, and (3) require each VA facility to implement a major preventive health care program annually.

We do not question the desirability of providing preventive health-care services. VA does have an active preventive health care program and plans to continue it.

We've asked ourselves, however, several questions which lead us to believe that these provisions are: too prescriptive, too burdensome, and too costly.

1. It is argued that it is good medical practice to provide preventive health care services.
   —If so, VA should not need Congressional mandates to practice "good medicine".
2. It is argued that VA is already providing the services, therefore, it won't cost additional money.
   —If so, then why is this provision necessary?
3. It is argued that such a provision is necessary because in times of limited resources these services may not be provided.
   —If so, should we not leave it to the medical professionals and administrators to determine how best to spend limited health care dollars?

The estimated 5-year costs of the bill are over $90 million. Where will medical center directors get the money to pay for this program.

During hearings held on VA's medical care funding situation, we heard VA medical and administrative staff that they simply can't afford to implement new mandatory programs. We believe we should heed their warnings.

If VA can continue to provide these services—then we say go right ahead. But let us not mandate an expansive and expensive new preventive health program during this very difficult financial period.

VET CENTER ELIGIBILITY

We remain concerned about a provision in the Committee bill which provides Vet Center eligibility for combat veterans of all wars or conflicts (other than Vietnam veterans—who are already entitled to this care).

We are, however, very supportive of committee report language which states that:

—VA will not have to conduct outreach, and

—The Committee does not intend that this provision should result in expansion in the number of Vet Centers.

Frankly, we find it very difficult to believe that veterans who participated in World War II (average age of 67) need to "readjust to civilian life".

Vet Centers were established for Vietnam veterans who were said to be alienated from VA and World War II veterans are not alienated from VA's system.

We wonder if scarce medical care resources should be spent in this manner.

Frank H. Murkowski.
Alan K. Simpson.

ADDITIONAL VIEWS OF SENATORS FRANK H. MURKOWSKI, ALAN K. SIMPSON, AND STROM THURMOND

THIRD PARTY REIMBURSEMENT

Senator Murkowski offered an amendment during the Committee's markup which would authorize VA to seek reimbursement from health-care insurance companies for the cost of health care which is furnished to a service-connected veteran for the treatment of a non-service-connected disability. It would further require VA to retain one-half of the collections for a period of two years. Unfortunately, the amendment was tabled.

A 1985 GAO report recommended that legislation be enacted to authorize VA to collect from third party payers for treatment of non-service-connected medical conditions. Ultimately such legislation was enacted in 1986 (Public Law 99-272) but it only applied to non-service-connected veterans.

In fiscal year 1988, almost $105 million was collected under this program, with another $275 million in outstanding receivables. Recoveries under this program are deposited into the U.S. Treasury and are not intended to reduce the annual VA appropriation.

We believe that if a veteran is paying for health insurance coverage that irrespective of who is providing the care, the insurance company should be responsible for reimbursing the provider for the cost of the care. These veterans—although service connected—are receiving treatment for non-service-connected disabilities. There is no reason that the government should not have the authority to seek reimbursement for the treatment of those disabilities if the veterans are insured.

For example, if a privately insured veteran is 20 percent service-connected for hearing loss and that veteran has a heart attack, why should VA not have authority to bill the insurance company for this care?

According to the Congressional Budget Office, enactment of legislation which would authorize such reimbursement would result in savings of $52 million in the first year of enactment. By 1994, savings of $81 million a year would be achieved.

This legislation does not affect a veteran's eligibility for care. There is no evidence that veterans will be harmed by this provision. It simply provides VA with a mechanism to be reimbursed—from private insurance companies—for non-service-connected care.

ENTITLEMENT FOR PTSD TREATMENT IRRESPECTIVE OF SERVICE-CONNECTION

We are also concerned about a provision in the Committee bill which provides an entitlement to inpatient and outpatient care for the treatment of Post-Traumatic Stress Disorder (PTSD) for veterans who served in combat and who have been diagnosed with PTSD even though no determination of service-connection has been made.

First, we strongly believe VA should have the capacity to treat veterans with PTSD who seek care in VA. In fact, we believe that VA has inappropriately assigned all mental illness programs to the back seat. There is no disagreement on that point. We, however, cannot support this provision because:

1. We believe it is inappropriate and a terrible precedent to designate in law a priority for treatment based upon a particular disorder rather than service-connection.

2. The reality of the situation is that there are limited healthcare dollars. The Congress has in the past and continues to strain the system by adding new priorities and obligations. In fact, fiscal year 1989 supplemental appropriations were needed in part because the Congress continues to create new entitlements and VA programs.

If the proponents of this provision had wished to identify which programs or services will not be funded so that PTSD treatment program could be expanded, we might reconsider our position on this provision.

3. The real tragedy of this provision is that there is no evidence that it will do a bit of good for anyone. It is not going to shorten lines at VA PTSD units. It is not going to make money drop from the sky. It simply makes a promise to veterans that we can't assure will be met.

Let us address some of the practical aspects of this provision.

It is unclear what the VBA determination would accomplish given the data and time likely to be available.

—A DD 214 will probably reveal if the veteran served in a theater of war. But, that is no indication that the veteran was actually exposed to combat.

—To establish exposure to combat would probably require examination of the veteran's military personnel records and perhaps unit operational records. These records will not be available in the time frames contemplated.

Thus, VBA would be put in the impossible position of either making a meaningless determination based on available records, or delaying action far longer than required by statute in order to make a meaningful determination. Neither option serves veterans well.

We are also concerned that, in the event VBA chooses to make a quick determination based on available records, subsequent examination of complete records, in response to a claim for service connection, may not reveal the actual existence of a stressor. We suspect veterans who have been treated on the basis of entitlement would feel they had been unjustly treated should a claim for compensation later be denied. Thus, a provision intended to expedite treatment could create an unjustified expectation of actual service connection.

While well intentioned, we believe practical considerations would render this provision meaningless. This is probably a good illustration of the reason for the current policy of requiring service connection before treating veterans on the basis that they have a service connected disability.

FRANK H. MURKOWSKI.
ALAN K. SIMPSON.
STROM THURMOND.

CHANGES IN EXISTING LAW MADE BY S. 13 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10—UNITED STATES CODE

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Subtitle A—General Military Law

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PART III—TRAINING

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CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

* * * * * * *

§ 2132. Eligibility for educational assistance

(a) A person who—

(1) after June 39, 1985—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before completing initial active duty for training has completed the requirements of a secondary school diploma (or [an equivalency certificate),] *the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary),* or in the case of an individual who reenlists or extends an enlistment as describe in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension;

is entitled to educational assistance under section 2131 of this title.

§ 2136. Administration of program

(a) * * *

* * * * * * *

(b) Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), [and 1683] *1683, and 1685* of chapter 34 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 1780(a)(5), 1780(b), 1786, 1787(b)(1), and 1792) shall be applicable to the provision of educational assistance under this chapter. The term "eligible veteran", as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

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TITLE 26—UNITED STATES CODE

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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SUBCHAPTER B—MISCELLANEOUS PROVISIONS

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§ 6103. Confidentiality and disclosure of returns and return information

(a) * * *

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(*l*) Disclosure of returns and return information for purposes other than tax adminstration.—

(1) * * *

* * * * * * *

(7) Disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of [1977.—] ***1977 or to the Department of Veterans Affairs.—***

(A) Return information from Social Security Administration.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from Internal Revenue Service.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) Programs to which rule applies.—The programs to which this paragraph applies are:

(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act.

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food Stamp Act of 1977; [and]

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law [93-66.] *93-66); and*

(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or any other law administered by the Department of Veterans Affairs;

(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

(III) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of title 38, United States Code; and

(IV) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected dis-

abilities, not rated as total; except that, in such cases, only wage and self-employment information may be disclosed.

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TITLE 28—UNITED STATES CODE

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APPENDIX

JUDICIAL PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

* * * * * *

§ 308. Definitions

For the purposes of this title, the term—

(1) * * *

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(9) "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals; United States district courts, including the district courts in the Canal Zone, Guam, and the Virgin Islands; Court of Claims; Court of Appeals for the Federal Circuit; Court of International Trade; Tax Court; United States Court of Military Appeals; *United States Court of Veterans Appeals;* and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and

(10) "judicial employee" means any employee of the judicial branch of the Government, of the Tax Court, [or] of the United States Court of Military [Appeals] *Appeals, or of the United States Court of Veterans Appeals* who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who receives compensation at a rate at or in excess of the minimum rate prescribed for grade 16 of the General Schedule under section 5332 of Title 5.

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TITLE 38—UNITED STATES CODE

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PART I—GENERAL PROVISIONS

* * * * * * *

CHAPTER 1—GENERAL

Sec.

101. Definitions.
102. Dependent parents.
103. Special provisions relating to marriages.
104. Approval of educational institutions.
105. Line of duty and misconduct.
106. Certain service deemed to be active service.
107. Certain service deemed not to be active service.
108. Seven-year absence presumption of death.
109. Benefits for discharged members of allied forces.
110. Preservation of disability ratings.
111. Payments or allowances for beneficiary travel.
112. Presidential memorial certificate program.
113. Treatment of certain programs under sequestration procedures.
114. Multiyear [procurement for certain medical items] *procurement.*

§ 101. Definitions

For the purposes of this title—

(1) * * *

* * * * * * *

(33) The term "Secretary" means the Secretary of Veterans Affairs (except when the context indicates otherwise).

* * * * * * *

§ 114. Multiyear procurement [for certain medical items]

(a) The Administrator may enter into a multiyear contract for the procurement of supplies or services [for use in Veterans' Administration health-care facilities] if the Administrator makes each of the following determinations:

(1) Appropriations are available for obligations that are necessary for total payments that would be required during the fiscal year in which the contract is entered into, plus the estimated amount of any cancellation charge payable under the contract.

(2) The contract is in the best interest of the United States by reason of the effect that use of a multiyear, rather than one-year, contract would have in—

(A) reducing costs;

(B) achieving economies in contract administration or in any other Veterans' Administration activities;

(C) increasing quality of performance by or service from the contractors; or

(D) encouraging effective competition.

(3) During the proposed contract period—

(A) there will be a continuing or recurring need for the supplies or services being procured;

(B) there is not a substantial likelihood of substantial changes in the need for such supplies or services in terms of the total quantity of such supplies or services or of the rate of delivery of such supplies or services; and

(C) the specifications for the supplies or services are expected to be reasonably stable.

(4) The risks relating to the prospective contractor's ability to perform in accordance with the specifications and other terms of the contract are not excessive.

(5) The use of a multiyear contract will not inhibit small business concerns in competing for the contract.

(6) In the case of the procurement of a pharmaceutical item for which a patent has expired less than four years before the date on which the solicitation of offers is issued, there is no substantial likelihood that increased competition among potential contractors would occur during the term of the contract as the result of the availability of generic equivalents increasing during the term of the contract.

(b)(1) * * *

* * * * * * *

(2)(A) If, during a fiscal year after the fiscal year during which a multiyear contract is entered into under this section, the Administrator determines that, in light of other funding needs involved in the operation of Veterans' Administration [health-care] programs, the amount of funds appropriated for such subsequent fiscal year is not sufficient for such contract, the Administrator shall cancel such contract pursuant to the provisions required by paragraph (1)(A) of this subsection.

* * * * * * *

(e) For the purposes of this section:

(1) The term "appropriations" has the meaning given that term in section 1511 of title 31.

[(2) The term "cancel" or "cancellation" refers to the termination of a contract by the Administrator as required under paragraph (2)(B)(i) of this subsection.]

[(3)] *(2)* The term "multiyear contract" means a contract which by its term is to remain in effect for a period which extends beyond the end of the fiscal year during which the contract is entered into but not beyond the end of the fourth fiscal year following such fiscal year. Such term does not include a contract for construction or for a lease of real property.

[(4)] *(3)* The term "nonrecurring, unrecovered costs" means those costs reasonably incurred by the contractor in performing a multiyear contract which (as determined under regulations prescribed under subsection (d) of this section) are generally incurred on a one-time basis.

CHAPTER 3—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

* * * * * * *

SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

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§ 218. Security and law enforcement on property under the jurisdiction of the Veterans' Administration

(a)(1) * * *

* * * * * * *

(f) The Secretary may not delegate the functional and technical supervision of the performance of security and law enforcement

functions under this section to any official outside the Office of the Secretary.

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PART II—GENERAL BENEFITS

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CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

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SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

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§ 362. Clothing allowance

The [Administrator] *Secretary* under regulations which the [Administrator] *Secretary* shall prescribe, shall pay a clothing allowance of $395 per year to each veteran [who because of disability which is compensable under the provisions of this chapter, wears or uses prosthetic or orthopedic appliance or appliances (including a wheelchair) which the Administrator determines tends to wear out or tear the clothing of such a veteran.] *who, because of disability which is compensable under this chapter—*

(1) wears or uses a prosthetic or orthopedic appliance (including a wheelchair) which the Secretary determines tends to wear out or tear the clothing of such veteran; or

(2) uses medication which (A) has been prescribed for a service-connected skin condition, and (B) the Secretary determines stains or otherwise damages such veteran's clothing.

* * * * * * *

CHAPTER 15—PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH OR FOR SERVICE

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SUBCHAPTER II—VETERANS' PENSIONS

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NON-SERVICE-CONNECTED DISABILITY PENSION

* * * * * * *

§ 524. Temporary program of vocational training for certain new pension recipients

(a)[(1) Subject to paragraph (3) of this subsection, in the case of a veteran under the age of 50 who is awarded pension during the program period, the Administrator shall determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Any such determination shall be made only after evaluation of the veteran's potential for rehabilitation, and any such evaluation shall include a personal interview of the veteran by a Veterans' Administration employee who is trained in vocational counseling. If the veteran fails, for reasons other than those beyond the veteran's control, to participate in the evaluation in the manner required by the Administrator in order to make such determination, the Administrator shall suspend the veteran's pension for the duration of such failure.]

[(2) Subject to paragraph (3) of this subsection, if a veteran who is 50 years of age or older and is awarded pension during the program period, or a veteran who was awarded pension before the beginning of the program period,] *(1) Subject to paragraph (2) of this subsection, if a veteran who is awarded pension on or before January 31, 1992,* applies for vocational training under this section and the Administrator makes a preliminary finding on the basis of information in the application that, with the assistance of a vocational training program under subsection (b) of this section, the veteran has a good potential for achieving employment, the Administrator shall provide the veteran with an evaluation in order to determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Any such evaluation shall include a personal interview by a Veterans' Administration employee trained in vocational counseling.

[(3)] *(2)* Not more than 3,500 veterans may be given evaluations under this subsection during any 12-month period beginning on February 1 of a year.

[(4) For the purposes of this section, the term "program period" means the period beginning on February 1, 1985, and ending on January 31, 1992.]

(b)(1) * * *

* * * * * * *

(4) A veteran may not begin pursuit of a vocational training program under this subsection after the later of (A) January 31, 1992, or (B) the end of a reasonable period of time, as determined by the Administrator, following [either the evaluation of the veteran under subsection (a) of this section or the award of pension to the veteran as described in subsection (a)(2)] *the award of pension to the veteran as described in subsection (a)(1)* of this section. Any determination by the Administrator of such a reasonable period of time shall be made pursuant to regulations which the Administrator shall prescribe.

(c) The pension being paid to a veteran who, while participating in a vocational training program under subsection (b) of this section, secures employment within the scope of the objective of the veteran's individualized written rehabilitation plan, or in a related field which requires reasonably developed skills and the use of some or all of the training or services furnished the veteran under such plan, shall not be terminated by reason of either the veteran's capacity to engage in such employment or the income received from such employment (but only if the veteran's annual income from the other sources would, taken alone, not result in the termination of the veteran's pension) unless the veteran maintains that employment for twelve consecutive months.

[(c)**]** *(d)* A veteran who pursues a vocational training program under subsection (b) of this section shall have the benefit of the provisions of subsection (a) of section 525 of this title beginning at such time as the veteran's entitlement to pension is terminated by reason of income from work or training (as defined in subsection (b)(1) of that section) without regard to the date on which the veteran's entitlement to pension is terminated.

[(d)**]** *(e)* Payments by the Administrator for education, training, and other services and assistance under subsection (b) of this section (other than the services of Veterans' Administration employees) shall be made from the Veterans' Administration appropriations account from which payments for pension are made.

* * * * * * *

CHAPTER 17—HOSPITAL, NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL

Sec.
601. Definitions.
602. **[**Presumption relating to psychosis**]** *Special provisions relating to mental illness disabilities.*
603. Contracts for hospital care and medical services in non-Veterans' Administration facilities.

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

610. Eligibility for hospital, nursing home, and domiciliary care.
611. Care during examinations and in emergencies.
612. Eligibility for outpatient services.
612A. Eligibility for readjustment counseling and related mental health services.
612B. Counseling for former prisoners of war.
613. Medical care for survivors and dependents of certain veterans.
614. Fitting and training in use of prosthetic appliances; seeing-eye dogs.
[615. Tobacco for hospitalized veterans.**]**
616. Hospital care by other agencies of the United States.
617. Home health services; invalid lifts and other devices.
618. Therapeutic and rehabilitative activities.
618A. Compensated work therapy and therapeutic residence pilot program.
619. Repair or replacement of certain prosthetic and other appliances.
620. Transfers for nursing home care; adult day health care.
620A. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities.
620B. Respite care.
620C. **[**[REPEALED]**]** *Community-based residential care for homeless and other chronically mentally ill veterans.*
620D. Noninstitutional alternatives to nursing home care; pilot program.

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SUBCHAPTER I—GENERAL

§ 601. Definitions

For the purposes of this chapter—

(1) * * *

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(6) The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services—

(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse when such services are necessary to overcome a service-connected disability impairing a veteran's procreative ability (but only if such services are furnished by contract, except for services which the Chief Medical Director determines that Department of Veterans Affairs facilities are fully capable of furnishing in a cost-effective manner), *(iii)* dental services and appliances as described in sections 610 and 612 of this title, *(iv)* optometric and podiatric **[**services**]** *services (v)* (in the case of a person otherwise receiving care or services under this **[**chapter**]** *chapter*) preventive health-care services as defined in section 662 of this title, **[**and**]** *(vi)* (except under the conditions described in section 612(f)(1)(A)(i) of this **[**title),**]** *title*) wheelchairs, artificial limbs, **[**trusses,**]** *trusses,* and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the **[**Administrator**]** *Secretary* determines to be reasonable and necessary, and **[**(ii)**]** *(vii)* travel and incidental expenses pursuant to the provisions of section 111 of this title; and

(B)(i) such consultation, professional counseling, training, and mental health services as are necessary in connection with the treatment—

(I) of the service-connected disability of a veteran pursuant to section 612(a) of this title, and

(II) in the discretion of the Administrator, of the nonservice-connected disability of a veteran eligible for treatment under section 612(f)(1)(A)(ii) of this title where such services were initiated during the veteran's hospitalization and the provision of such services on an outpatient basis is essential to permit the discharge of the veteran from the hospital,

for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran (including, under the terms and conditions set forth in section 111 of this title, travel and incidental expenses of such family member or individual in the case of a veteran who is receiving care for a service-connected disability, or in the case of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title); and

(ii) in the case of an individual who was a recipient of services under subclause (i) of this clause at the time of—

(I) the unexpected death of the veteran; or

(II) the death of the veteran while the veteran was participating in a hospice program (or a similar program) conducted by the Administrator,

such counseling services, for a limited period, as the Administrator determines to be reasonable and necessary to assist such individual with the emotional and psychological stress accompanying the veteran's death.

For the purposes of this paragraph, a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title shall be eligible for the same medical services as a veteran.

* * * * * * *

§ 602. **[Presumption relating to psychosis]** *Special provisions relating to mental illness disabilities*

(a) For the purposes of this chapter, any veteran of World War II, the Korean conflict, or the Vietnam era who developed an active psychosis (1) within two years after discharge or release from the active military, naval or air service, and (2) before July 26, 1949, in the case of a veteran of World War II, before February 1, 1957, in the case of a veteran of the Korean conflict, or before May 8, 1977, in the case of a Vietnam era veteran, shall be deemed to have incurred such disability in the active military, naval, or air service.

(b)(1) Any veteran—

(A) who, as determined by the Chief Benefits Director of the Department of Veterans Affairs in accordance with paragraph (2) of this subsection, served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, the Korean conflict, or the Vietnam era or in any other area during a period in which hostilities (as defined in subsection (c) of this section) occurred in such area, and

(B) whom a mental health professional designated by the Chief Medical Director has diagnosed, following an examination of such veteran by such professional, to be suffering from post-traumatic stress disorder related to such service,

shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A) of this title even though such disorder has not been determined to be service-connected.

(2) In the case of a veteran who is diagnosed as suffering from post-traumatic stress disorder, a determination of whether the veteran satisfies the service requirement related to such disorder set out in paragraph (1) of this subsection shall be made by the most expeditious means practicable.

(c) For the purposes of subsection (b) of this section, the term "hostilities" means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

* * * * * * *

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

* * * * * * *

§ 612. Eligibility for outpatient services

(a)(1) * * *

* * * * * * *

(b)(1) Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—

(A) which is service-connected and compensable in degree;

(B) which is service-connected, but not compensable in degree, but only if—

(i) the dental condition or disability is shown to have been in existence at the time of the veteran's discharge or release from active military, naval, or air service;

(ii) the veteran had served on active duty for a period of not less than 180 days immediately before such discharge or release;

(iii) application for treatment is made within 90 days after such discharge or release, except that (I) in the case of a veteran who reentered active military, naval, or air service within 90 days after the date of such veteran's prior discharge or release from such service, application may be made within 90 days from the date of such veteran's subsequent discharge or release from such service and (II) if a disqualifying discharge or release has been corrected by competent authority, application may be made within 90 days after the date of correction; and

(iv) the veteran's certificate of discharge or release from active duty does not bear a certification that the veteran was provided, within the 90-day period immediately before the date of such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental services and treatment indicated by the examination to be needed;

(C) which is a service-connected dental condition or disability due to combat wounds or other service trauma, or of a former prisoner of war;

(D) which is associated with and is aggravating a disability resulting from some other disease or injury which was incurred in or aggravated by active military, naval, or air service;

(E) which is a non-service-connected condition or disability of a veteran for which treatment was begun while such veteran was receiving hospital care under this chapter and such services and treatment are reasonably necessary to complete such treatment;

(F) from which a veteran who is a former prisoner of war and who was detained or interned for a period of not less than 90 days is suffering; [or]

(G) from which a veteran who has a service-connected disability rated as total is [suffering.] *suffering; or*

(H) for which the furnishing of such services, treatment, or appliances is medically necessary in preparation for hospital admission.

* * * * * * *

(3) The total amount which the Administrator may expend for furnishings, during any twelve-month period, outpatient dental services, treatment, or related dental appliances to a veteran under

this section through private facilities for which the Administrator has contracted under clause (1), (2), or (5) of section 603(a) of this title may not exceed **[**$500**]** *$1,000* unless the Administrator determines, prior to the furnishing of such services, treatment, or appliances and based on an examination of the veteran by a dentist employed by the Veterans' Administration (or, in an area where no such dentist is available, by a dentist conducting such examination under a contract or fee arrangement), that the furnishing of such services, treatment, or appliances at such cost is reasonably necessary.

* * * * * * *

§ 612A. Eligibility for readjustment counseling and related mental health services

(a)*(1)* Upon the request of any veteran who served on active duty during the Vietnam era, the Administrator shall, within the limits of Veterans' Administration facilities, furnish counseling to such veteran to assist such veteran in readjusting to civilian life. Such counseling shall include a general mental and psychological assessment to ascertain whether such veteran has mental or psychological problems associated with readjustment to civilian life.

(2)(A) Upon the request of any veteran who served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, or the Korean conflict or in any other area during a period in which hostilities (as defined in subparagraph (B) of this paragraph) occurred in such area, the Secretary may furnish counseling to such veteran in order to assist the veteran to overcome any psychological problems associated with such service. The counseling shall include a general mental and psychological assessment to ascertain whether the veteran has mental or psychological problems associated with such service.

(B) For the purposes of subparagraph (A) of this paragraph, the term "hostilities" means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

* * * * * * *

(h)(1) * * *

* * * * * * *

(2) The services referred to in paragraph (1) of this subsection are—

(A) counseling with respect to, and assistance in applying for, all benefits and services under laws administered by the **[**Veterans' Adminstration**]** *Department* for which veterans participating in the pilot program may be eligible;

(B) employment counseling, training, placement, and related services described in sections 2003 and 2003A of this title or provided under any other law administered by the Secretary of Labor;

(C) initial intake and referral services with respect to disabilities related to alcohol or drug dependence or abuse and follow-up services for veterans who have received treatment for such disabilities; and

(D) assistance in coordinating the provision of benefits and services to veterans participating in the pilot program with respect to such veterans' receipt of—

(i) services provided under the pilot program; and

(ii) other benefits and services provided under laws administered by the [Veterans' Administration,] *Department,* the Secretary of Labor, or any other Federal agency or official.

* * * * * * *

(4) The Administrator—

(A) shall be responsible for coordinating the assignment and use of employees, on full- or part-time bases, as appropriate, in each Resource Center; and

(B) shall, in carrying out that responsibility, make maximum feasible use of the [Veterans' Adminstration] *Department* employees who are providing services at each facility on the date it is designated as a Resource Center under this subsection.

* * * * * * *

(i) Whenever a veteran is referred by a center to a Department general health-care facility for a determination regarding such veteran's eligibility for care and services under section 602(b) of this title, the veteran shall be evaluated for diagnostic purposes within 7 days after the date on which the referral is made.

[(i)]*(j)* For the purposes of this section:

(1) The term "center" means a facility (including a Resource Center designated under subsection (h)(3)(A) of this section) which is operated by the [Veterans' Adminstration] *Department* for the provision of services under this section and which (A) is situated apart from [Veterans' Adminstration] *Department* general health-care facilities, or (B) was so situated but has been relocated to a [Veterans' Adminstration] *Department* general health-care facility.

(2) The term ["Veterans' Adminstration] *"Department* general health-care facility" means a health-care facility which is operated by the [Veterans' Adminstration] *Department* for the furnishing of health-care services under this chapter, not limited to services provided through the program established under this section.

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§ 614. Fitting and training in use of prosthetic appliances; seeing-eye dogs

(a) * * *

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(b) The Administrator may provide seeing-eye or guide dogs trained for the aid of the blind to veterans who are entitled to disability compensation, and may pay travel and incidental [expenses under] *expenses, under* the terms and conditions set forth in section 111 of this [title] *title, for travel* to and from their homes

[and] *that are* incurred in becoming adjusted to such seeing-eye or guide dogs. The Administrator may also provide such veterans with mechanical or electronic equipment for aiding them in overcoming the handicap of blindness.

(c)(1) The Secretary may provide signal dogs to veterans who have service-connected hearing impairments and are in need of the assistance of such dogs, and may pay travel and incidental expenses, under the terms and conditions set forth in section 111 of this title, for travel to and from their homes that are incurred in becoming adjusted to such signal dogs.

(2) For the purposes of this subsection, the term "signal dog" means a dog specially trained to provide hearing assistance to deaf persons.

[§ 615. Tobacco for hospitalized veterans

[The Administrator may furnish tobacco to veterans receiving hospital or domiciliary care.]

* * * * * * *

§ 618. Therapeutic and rehabilitative activities

(a) * * *

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(b)(1) In furnishing rehabilitative services under this chapter, the Administrator, upon the recommendation of the Chief Medical Director, may enter into [contractual arrangements with private industry or other sources outside the Veterans' Administration] *a contract or other arrangement with any appropriate source (whether or not an element of the Department of Veterans Affairs or of any other Federal entity)* to provide for [therapeutic] *compensated* work *therapy* for patients and members in Veterans' Administration health care facilities.

(2) Notwithstanding any other provision of law, the Administrator may also furnish rehabilitative services under this subsection through contractual arrangements with nonprofit entities to provide for such [therapeutic] *compensated* work *therapy* for such patients. The Administrator shall establish appropriate fiscal, accounting, management, recordkeeping, and reporting requirements with respect to the activities of any such nonprofit entity in connection with such contractual arrangements.

(c)(1) There is hereby established in the Treasury of the United States a revolving fund known as the Veterans' Administration Special Therapeutic and Rehabilitation Activities Fund (hereinafter in this section referred to as the "fund") for the purpose of carrying out the provisions of subsection (b) of this [section.] *section (including defraying the costs of travel and related expenses necessary to train and educate employees in the administration of services under such subsection) and for the purpose of carrying out section 618A(c) of this title.* Such amounts of the fund as the Administrator may determine to be necessary to establish and maintain operating accounts for the various rehabilitative services activities may be deposited in checking accounts in other depositaries selected or established by the Administrator.

(2) All funds received by the Veterans' Administration under contractual arrangements made under subsection (b) of this section, or by nonprofit entities described in paragraph (2) of such subsection, *and all funds received by the Department as rent under section 618A(c) of this title,* shall be deposited in or credited to the fund, and the Administrator shall distribute out of the fund moneys to participants at rates not less than the wage rates specified in the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and regulations prescribed thereunder for work of similar character. *The Secretary may also distribute out of unobligated amounts in the fund such amounts as may be necessary for the acquisition, management, maintenance, and disposition of real property for the purpose of carrying out section 618A of this title.*

* * * * * * *

§ 618A. Compensated work therapy and therapeutic residence pilot program

(a) During fiscal years 1990–1994, the Secretary shall conduct a compensated work therapy and therapeutic residence pilot program. The pilot program shall have two components as follows:

(1) A component, under subsection (b) of this section, which provides for contracting with nonprofit corporations to furnish compensated work therapy in conjunction with the operation of therapeutic residences.

(2) A component, under subsection (c) of this section, which provides for the direct operation of therapeutic residences in conjunction with the furnishing of compensated work therapy.

(b)(1) Under the pilot program, the Secretary shall encourage and participate in the establishment of nonprofit corporations for the purpose of contracting with such nonprofit corporations to conduct compensated work therapy programs under the pilot program at not less than ten and not more than fifteen Department of Veterans Affairs medical centers operating such programs.

(2) The Secretary may enter into a contract with a nonprofit corporation under the pilot program only if the corporation provides assurances satisfactory to the Secretary that it will operate a therapeutic residence for eligible veterans in conjunction with an existing compensated work therpy program at a medical center. The contract may remain in effect only as long as the corporation operates the therapeutic residence for eligible veterans in connection with the pilot program.

(3) A contract with a nonprofit corporation under this subsection may provide for the Secretary to furnish the corporation (with or without compensation) in-kind services, including—

(A) technical and clinical advice;

(B) supervision of the activities of compensation work therapy participants in the rehabilitation of any property for use as a therapeutic residence under the contract and for possible later sale as a private residence; and

(C) minor maintenance of and minor repairs to such a therapeutic residence.

(4)(A) In order to assist a nonprofit corporation to purchase or lease any real property for the purpose of operating a therapeutic

residence under the pilot program or to operate such a residence, the Secretary may lend the corporation up to the maximum amounts specified in subparagraphs (C) and (D), respectively, of this paragraph.

(B) Loans authorized by this paragraph shall be paid out of sums in the fund.

(C) The amount of a loan under this paragraph for the purchase or lease of real property may not exceed—

(i) in the case of a purchase of real property for such use, the amount equal to 25 percent of the purchase price; or

(ii) in the case of a lease of real property for such use, the amount of the rent for one year.

(D) The amount of a loan under this paragraph for the operation of a therapeutic residence may not exceed an amount equal to the estimated amount, as approved by the Secretary, for the operation of the residence for a period of six months.

(E) A loan made to a nonprofit corporation under this paragraph—

(i) shall be payable on demand;

(ii) shall not bear interest for the first five years;

(iii) after the first five years, shall bear a rate of interest specified by the Secretary, in consultation with the Secretary of the Treasury; and

(iv) shall be subordinate to any mortgage loan entered into for purchase of the residence.

(5) In the case of each nonprofit corporation to which a loan is made under paragraph (4) of this subsection for the purchase of real property, the pilot program contract with such corporation shall include a provision that requires the corporation—

(A) to sell the real property if the corporation does not operate or ceases to operate a therapeutic residence on that property;

(B) to pay the fund the sum of the unpaid balance of the loan and the amount equal to 50 percent of the excess, if any, of the sale price over the total amount paid by the corporation for the purchase and improvement of such real property; and

(C) to use the proceeds of the sale of the property to pay the obligations imposed by clause (B) of this paragraph.

(6)(A) The Secretary shall deposit in escrow any sums to be loaned to a nonprofit corporation under paragraph (4) of this subsection until the corporation demonstrates to the satisfaction of the Secretary that at least 25 percent of the net annual operating expenses of the corporation will be paid out of funds obtained from sources other than Department of Veterans Affairs or will be satisfied by in-kind servics obtained from such services, or both. For the purpose of this subparagraph, the term "net annual operating expenses" means the amount equal to the excess of the estimated amount of the annual expenses of operating the therapeutic residence or therapeutic residences to be acquired or operated or operated with such escrow sums over the estimated annual rental income from eligible veterans residing in such residence or residences.

(B) If, in the case of a corporation for which any amount is held in escrow to subparagraph (A) of this paragraph in connection with a contract awarded under the pilot program, the corporation fails to meet the requirements of such subparagraph within 18 months after

the award of that contract, the corporation shall forfeit all rights to the amount so held in escrow, the escrow shall be terminated, and that amount shall be credited to the fund.

(7)(A) Subject to subparagraph (b) of this paragraph, the Secretary shall transfer to the Veterans Health Services and Research Administration not less than 10 residences acquired by the Department of Veterans Affairs in the administration of chapter 37 of this title.

(B) Each property so transferred under this paragraph—

(i) shall be located in an area suitable for meeting the need of the Department for a therapeutic residence under the pilot program; and

(ii) shall be leased, in accordance with subparagraph (C) of this paragraph, to a nonprofit corporation for operation as a therapeutic residence under the pilot program.

(C) A lease of property under this paragraph—

(i) shall provide for a lease period of not less than one and not more than three years and may include one or more options for renewal at the option of both parties for up to three additional years;

(ii) shall require that the property be operated as a therapeutic residence during the lease period;

(iii) shall require that the residents of the therapeutic residence pay to the nonprofit corporation such reasonable rent as the Secretary shall prescribe;

(iv) shall require the lessee to pay to the medical center benefiting from the operation of such therapeutic residence 60 percent of the rent received each month during the lease period from eligible veterans residing in a therapeutic residence on such property;

(v) shall provide for return of the property to the Secretary upon termination of the lease; and

(vi) shall include such other terms and conditions, consistent with this subsection, as the Secretary considers appropriate for protection of the interests of the United States.

(8) The director of a medical center shall hold the sums received pursuant to paragraph (8)(C)(iii) of this subsection until such sums are transferred pursuant to this paragraph. The Secretary shall periodically transfer such sums to the appropriate loan guaranty fund. The Secretary, in consultation with the Secretary of the Treasury, shall prescribe regulations to carry out this paragraph.

(9) In the case of a nonprofit corporation that, on September 30, 1989, is conducting a compensated work therapy program pursuant to a contract awarded by the Department of Veterans Affairs, the operations of such corporation not covered by a contract awarded under the pilot program shall not be affected by the provisions of this subsection.

(10) In-kind services furnished to a nonprofit corporation by the Department of Veterans Affairs under the pilot program shall be considered as part of a passthrough account under the Department's resource allocation methodology and any other methodology used by the Department to allocate resources to its health-care facilities.

(11)(A) Any nonprofit corporation established to operate a therapeutic residence or therapeutic residences under the pilot program shall be established in accordance with the nonprofit corporation

laws of the State or States in which the therapeutic residence or residences are to be operated and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State or States, as the case may be.

(B) A nonprofit corporation participating in the pilot program shall be established solely for the purpose of conducting one or more compensated work therapy programs and operating therapeutic residences in conjunction with such programs.

(C) Except as otherwise provided in this paragraph or under regulations prescribed by the Secretary, a nonprofit corporation participating in the pilot program, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

(D) The board of directors of each nonprofit corporation participating in the pilot program shall include employees of the Department, but the total number of such employees on the board must be less than one-half of the total number of directors. An employee of the Department of Veterans Affairs directly responsible for the conduct of compensated work therapy programs at the medical center benefiting from the operation of a therapeutic residence by the corporation shall be a member of the board.

(E) A nonprofit corporation participating in the pilot program may—

(i) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely to carry out the purpose specified in subparagraph (B) of this subsection;

(ii) employ such employees as it considers necessary for such purpose and fix the compensation of such employees; and

(iii) in the discretion of the corporation board of directors, transfer gifts and grants accepted under clause (i) of this subparagraph to the fund.

(F) The records of a nonprofit corporation participating in the pilot program shall be available to the Secretary.

(G) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a nonprofit corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

(H) Such a nonprofit corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

(I) Each such nonprofit corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

(J) Each member of the board of directors of a non-profit corporation paricipating in the pilot program, each employee of such a corporation, and each employee of the Department involved in the functions of the corporation during any year—

(i) shall, with respect to such functions, be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

(ii) shall, with respect to such functions, submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as is required of Federal employees.

(K) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and locations of nonprofit corporations participating in the pilot program and the amount loaned and the value of in-kind services furnished by the Secretary to each such corporation under the pilot program.

(c)(1) Under the pilot program, the Secretary, in connection with the conduct of compensated work therapy programs at not less than ten and not more than fifteen Department of Veterans Affairs medical centers, shall operate residences as therapeutic residences for the furnishing of transitional housing solely for veterans who are furnished compensated work therapy pursuant to section 618(b) of this title.

(2) Nothwithstanding any other provision of law, the Secretary may use such procurement procedures for the purchase, lease, or other acquisition of residential housing for purposes of this subsection as the Secretary considers appropriate to expedite the opening and operation of therapeutic residences and to protect the interest of the United States.

(3) A therapeutic residence may be operated for veterans described in paragraph (1) of this subsection under the following conditions:

(A) That only veterans described in such paragraph and a house manager reside in such residence.

(B) That each resident, other than the house manager, pay the Department rent for the period or periods of residence in such residence.

(C) That, in the establishment and operation of such therapeutic residence in a community, the Secretary consult with appropriate representatives of such community and comply with zoning requirements, building permit requirements, and similar requirements applicable to other real property used for similar purposes in such community.

(D) That the residence meet the State and community fire and safety requirements applicable to other real property used for similar purposes in the community in which the therapeutic residence is located.

(4)(A) The Secretary may provide for free room and subsistence for a house manager in addition to or instead of payment of a fee for the house manager's services.

(B) The total amount of the compensation paid and otherwise provided for a house manager (taking into consideration the value of any free room and subsistence under subparagraph (A) of this paragraph) may not be less than the equivalent of the total amount that would be payable to the house manager for the house manager's services if the house manager were paid the hourly minimum wage

under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)).

(5) The Secretary may operate as a therapeutic residence under this subsection—

(A) any suitable residential property (i) acquired by the Secretary as the result of a default on a loan made, guaranteed, or insured under chapter 37 of this title, or (ii) purchased for the pilot program; and

(B) any other suitable residential property purchased, leased, or otherwise acquired by the Secretary.

(6) In the case of the purchase of any property referred to in paragraph (5)(A) of this subsection, the Secretary shall transfer from unobligated amounts in the fund to the appropriate loan guaranty fund the amount equal to the amount that the Secretary would charge for the sale of such property to a nonprofit organization or a State pursuant to section 9 of Public Law 100–198 (101 Stat. 1320).

(7) Subject to the authority, direction, and control of the Secretary, the Chief Medical Director shall be responsible for the management, maintenance, and disposition of property acquired for the purpose of this subsection.

(8) The Secretary shall prescribe—

(A) a procedure for establishing reasonable rental rates for persons residing in therapeutic residences; and

(B) appropriate limits on the period for which such persons may reside in therapeutic residences.

(9) The Secretary may dispose of any property acquired for the purpose of carrying out this subsection when such property is no longer used for such purpose. The proceeds of disposition of such property shall be credited to the fund.

(d)(1) There is authorized to be appropriated to the fund for the purposes of carrying out this section, a total of $5,000,000 for fiscal years 1990 through 1994.

(2) To the extent that less than $5,000,000 is appropriated pursuant to paragraph (1) of this subsection, the Secretary may transfer to the fund, from unobligated amounts in the General Post fund of the Department of Veterans Affairs medical center that will contract for the operation of or operate a therapeutic residence under this section, such amounts as the Secretary determines are necessary, in addition to any amounts so appropriated, to carry out this section.

(e)(1) Not later than February 1, 1994, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program.

(2) The report shall include—

(A) the Secretary's assessment of the effects that transfers of housing to Veterans Health Services and Research Administration under the pilot program have on the Loan Guaranty Revolving Fund established under section 1824(a) of this title and the Home Loan Guaranty Fund established under section 1824(a) of this title; and

(B) such recommendations as the Secretary considers appropriate.

(f) For the purposes of this section—

(1) the term "appropriate loan guaranty fund" means (i) in the case of a lease or purchase of a property that had secured a

loan that was guaranteed, insured, or made under chapter 37 of this title and was closed or assumed after September 30, 1989, the Home Loan Guaranty Fund established by section 1824(a) of this title, or (ii) in the case of any other property, the Loan Guaranty Revolving Fund established under section 1824(a) of this title;

(2) the term "eligible veteran" means a veteran eligible to receive therapeutic and rehabilitative services under this section;

(3) the term "existing compensated work therapy program" means a compensated work therapy program that is being conducted under section 618(b) of this title by a Department of Veterans Affairs medical center on the date of the enactment of the Veterans Benefits and Health Care Act of 1989;

(4) the term "fund" means the Special Therapeutic and Rehabilitation Activities Fund established by section 618(c)(1) of this title;

(5) the term "nonprofit corporation" means a corporation recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

(6) the term "therapeutic residence" means a residential facility in which eligible veterans may reside while participating in a compensated work therapy program conducted pursuant to section 618 of this title and includes real property associated with such facility.

(g) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

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§ 620B. Respite care

(a) * * *

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(c) The authority provided by this section terminates on September 30, [1989.] *1991.*

§ 620C. Community-based residential care for homeless and other chronically mentally ill veterans.

(a)(1) The Secretary shall conduct a program to furnish care and treatment and rehabilitative services (directly or by contract) in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities to homeless veterans suffering from chronic mental illness disabilities who are eligible for care under section 610(a)(1) of this title.

(2) As part of the program, the Secretary may also provide such care and treatment and rehabilitative services to—

(A) veterans with service-connected chronic mental illness disabilities;

(B) veterans described in section 612(a)(1)(B) of this title who have chronic mental illness disabilities; and

(C) veterans being furnished hospital or nursing home care by the Secretary for chronic mental illness disabilities.

(b) Before furnishing care and treatment and rehabilitative services by contract under subsection (a)(1) of this section to a veteran through a facility described in such subsection, the Secretary shall approve (in accordance with criteria which the Secretary shall prescribe) the quality and effectiveness of the program operated by such facility for the purpose for which the veteran is to be furnished such care and services.

(c) The Secretary may provide in-kind assistance (through the services of Department of Veterans Affairs employees and the sharing of other Department resources) to a non-Department facility described in subsection (a)(1) of this section that is furnishing care and services to veterans under this section. Any such in-kind assistance shall be provided under a contract between the Department and such facility. The Secretary may provide such assistance only for use solely in the furnishing of appropriate care and services under this subsection and only if, under such contract, the Department receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

(d) The Secretary may not furnish care and treatment and rehabilitative services under subsection (a) of this section after September 30, 1992.

(e) Not later than February 1, 1992, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience of the Department under this section and the recommendation of the Secretary (together with the reasons for such recommendation) as to whether the program should be continued.

(f) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

§ 620D. Noninstitutional alternatives to nursing home care; pilot program

(a) During the four-year period beginning on October 1, 1989, the Secretary shall conduct a pilot program for the furnishing of medical, rehabilitative, and health-related services in noninstitutional settings for veterans who—

(1) are eligible under this chapter for, and are in need of, nursing home care; and

(2)(A) are in receipt of or in need of nursing home care primarily for the treatment of a service-connected disability; or

(B) have a service-connected disability rated at 50 percent or more.

(b)(1) Under the pilot program conducted pursuant to subsection (a), the Secretary shall (A) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (B) in the case of each veteran furnished services under the pilot program, appoint a Depart-

ment of Veterans Affairs health-care employee to furnish case management services.

(2) For the purposes of paragraph (1) of this subsection, "case management" includes the coordination and facilitation of all services furnished to a veteran by the Department of Veterans Affairs, either directly or through contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Department, either directly or through a contract, or by an entity other than the Department) monitoring, reassessment, and followup.

(c) The Secretary may provide in-kind assistance (through the services of Department of Veterans Affairs employees and the sharing of other Department resources) to a facility furnishing services to veterans under subsection (b)(1)(A) of this section. Any such in-kind assistance shall be provided under a contract between the Department and the facility concerned. The Secretary may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Department receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

(d) The total cost of providing services or in-kind assistance in the case of any veteran in any fiscal year under the pilot program may not exceed 65 percent of the cost that would have been incurred by the Department during such fiscal year if the veteran had been furnished, instead, nursing home care under section 610 of this title in that fiscal year.

(e) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

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§ 628. Reimbursement of certain medical expenses

(a) The Administrator may, under such regulations as the Administrator shall prescribe, reimburse veterans entitled to hospital care or medical services under this chapter for the reasonable value of such care or services (including travel and incidental expenses under the terms and conditions set forth in section 111 of this title), for which such veterans have made payment, from sources other than the Veterans' Administration, where—

(1) such care or services were rendered in a medical emergency of such nature that delay would have been hazardous to life or health;

(2) such care or services were rendered to a veteran in need thereof (A) for an adjudicated service-connected disability, (B)

for a non-service-connected disability associated with and held to be aggravating a service-connected disability, (C) for any disability of a veteran who has a total disability permanent in nature from a service-connected disability, or (D) for any illness, injury, or dental condition in the case of a veteran who is [found to be (i) in need of vocational rehabilitation under chapter 31 of this title and for whom an objective had been selected or (ii) pursuing a course of vocational rehabilitation training and] *(i) a participant in a vocational rehabilitation program (as defined in section 1501(9) of this title), and (ii)* is medically determined to have been in need of care or treatment to make possible such veteran's entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training which was interrupted because of such illness, injury, or dental condition; and

(3) Veterans' Administration or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not have been reasonable, sound, wise, or practical.

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SUBCHAPTER VII—PREVENTIVE HEALTH-CARE SERVICES PILOT PROGRAM

§ 661. Purpose

The purpose of this subchapter is to provide for a preventive health-care services pilot program in order to help (1) ensure the best possible health care for certain veterans otherwise being furnished care or services under this [chapter, including veterans with service-connected disabilities rated at 50 per centum or more and veterans being furnished care or services involving a service-connected disability under this chapter,] *chapter* by furnishing to such veterans feasible and appropriate preventive health-care services, and (2) determine the cost-effectiveness and medical advantages of furnishing such preventive health-care services.

§ 662. Definition

For the purposes of this subchapter, the term "preventive health-care services" means—

(1) periodic medical and dental [examinations;] *examinations (including screenings for high blood pressure, glaucoma, colorectal cancer, and cholesterol);*

(2) patient health education (including [nutrition education);] *education about nutrition, stress management, physical fitness, and smoking cessation);*

(3) maintenance of drug use profiles, patient drug monitoring, and drug utilization education;

(4) mental health preventive services;

(5) substance abuse prevention measures;

(6) immunizations against infectious disease;

(7) prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature;

(8) genetic counseling concerning inheritance of genetically determined diseases;

(9) routine vision testing and eye care services;

(10) periodic reexamination of members of likely target populations (high-risk groups) for selected diseases and for functional decline of sensory organs, together with attendant appropriate remedial intervention; and

(11) such other health-care services as the Administrator may determine to be necessary to provide effective and economical preventive health care.

§ 663. Preventive health-care services

(a)(1) In order to carry out the purpose of this subchapter, the [Administrator, within the limits of Veterans' Administration facilities and in accordance with regulations which the Administrator shall prescribe, shall, during fiscal years 1984 through 1988, furnish to any veteran described in section 612(a)(1)(B) of this title otherwise being furnished care or services under this chapter, and to any veteran receiving care or services under this chapter involving a service-connected disability, such preventive health-care services as the Administrator determines are feasible and appropriate. In carrying out the pilot program under this subchapter, the Administrator may furnish such preventive health-care services to any other veteran described in section 612(a)(1)(B) of this title.] *Secretary, through fiscal year 1994—*

(A) shall furnish annually at least two preventive health-care services that the Secretary determines to be feasible and appropriate to any veteran being furnished care or services under section 610(a)(1) or 612(a)(1) or (2) of this title; and

(B) shall implement annually at each Department of Veterans Affairs health-care facility a major preventive health-care and health-promotion initiative for such veterans.

* * * * * * *

(c) In carrying out the program provided for in this subchapter, the Administrator may not expend more than $10,000,000 in fiscal year 1980, more than $12,000,000 in fiscal year 1981, more than $13,000,000 in fiscal year 1982, more than $14,000,000 in fiscal year 1983, [or] more than $15,000,000 in each of fiscal years 1984 through [1988.] *1988, more than $16,000,000 in fiscal year 1990, more than $17,000,000 in fiscal year 1991, more than $18,000,000 in fiscal year 1992, more than $19,000,000 in fiscal year 1993, or more than $20,000,000 in fiscal year 1994.*

(d)(1) The Chief Medical Director shall designate an official in the Veterans Health Services and Research Administration to act as the Director of Preventive Health-Care and Health-Promotion Programs.

(2) The Director of Preventive Health-Care and Health-Promotion Programs shall prepare guidance regarding and be responsible for coordinating and evaluating, and advising the Chief Medical Director on, all activities carried out under this subchapter.

§ 664. Reports

[The Administrator shall include in the annual report to the Congress for each of fiscal years 1984 through 1988 required by section 214 of this title a comprehensive report on the administration of this subchapter, including such recommendations for additional legislation as the Administrator considers necessary.]

(a) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives—

(1) not later than February 1, 1992, an interim report on the experience under the program provided for by this subchapter; and

(2) not later than February 1, 1994, a final report on the experience under the program.

(b) Each report submitted pursuant to subsection (a) of this section shall include, with respect to the experience under the program through September 30 of the year preceding the deadline for submission of such report specified in subsection (a) of this section—

(1) a description of the types of services that have been furnished pursuant to section 663(a)(1)(A) and the number of veterans who received such services;

(2) a description of the preventive health-care and health-promotion initiatives that were implemented pursuant to section 663(a)(1)(B) of this title and the number of veterans who have been served through such initiatives;

(3) a description of the types of preventive health-care services that have been furnished pursuant to sections 610, 612, and 601(6) of this title and the number of veterans who received such services;

(4) a description of activities conducted pursuant to section 663(a)(2) of this title;

(5) an assessment of the results of the program; and

(6) any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate.

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CHAPTER 23—BURIAL BENEFITS

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§ 906. Headstones, markers, and grave liners

(a) * * *

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(d) In lieu of furnishing a headstone or marker under subsection (a)(2) or (b) of this section, the Administrator, in the Administrator's discretion, having due regard for the circumstances in each case, may reimburse the person entitled to request such headstone or marker for the [actual cost incurred by or on behalf of such person in] *cost of* acquiring a non-Government headstone or marker for placement in any cemetery other than a national cemetery in connection with the burial or memorialization of the deceased individual. *The cost referred to in the preceding sentence is the cost actually incurred by or on behalf of such person or the cost prepaid by the decreased individual, as the case may be.* Reimbursement under [the preceding sentence] *this subsection* may be made only upon the request of the person entitled to request the headstone or marker and may not be made in an amount in excess of the average actual cost, as determined by the Administrator, of headstones and markers furnished under subsection (a) and (b) of this section.

* * * * * * *

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

Sec.

1000. Establishment of National Cemetery System; composition of such system; appointment of director.
1001. Advisory Committee Cemeteries and Memorials.
1002. Persons eligible for interment in national cemeteries.
1003. Memorial areas.
1004. Administration.
1005. Disposition of inactive cemeteries.
1006. Acquisition of lands.
1007. Authority to accept and maintain suitable memorials.
1008. Aid to States for establishment, expansion, and improvement of veterans' cemeteries.
1009. Memorial areas in Arlington Cemetery.
1010. Burial of cremated remains in Arlington National Cemetery.

* * * * * * *

§ 1010. Burial of cremated remains in Arlington National Cemetery

The Secretary of the Army shall designate an area of appropriate size within Arlington National Cemetery for the unmarked interment of the ashes of persons eligible for interment in Arlington Cemetery whose remains were cremated and shall prescribe regulations for such interments. The area selected by the Secretary shall be an area that is not suitable for the burial of casketed remains.

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

* * * * * * *

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

§ 1411. Basic educational assistance entitlement for service on active duty

(a) Except as provided in subsection (c) of this section, each individual—

(1) who—

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) who (I) serves, as the individual's initial obligated period of active duty, at least three years of continuous active duty in the Armed Forces, or (II) in the case of an individual whose initial period of active duty is less than three years, serves at least two years of continuous active duty in the Armed Forces; or

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability, for a medical condition which preexisted such service on active duty and which the Administrator determines is not service connected, or for hardship; (II) for the convenience of the Government, in the case of an individual who completed not less than 20 months of continuous active duty, if the initial obligated period of active duty of the individual was less than three years, or in the case of an individual who completed not less than 30 months of continuous active duty if the initial obligated period of active duty of the individual was at least three years; or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or

(B) as of December 31, 1989, is eligible for educational assistance benefits under chapter 34 of this title and was on active duty on October 19, 1984, and without a break in service since October 19, 1984, and—

(i) after June 30, 1985, serves at least three years of continuous active duty in the Armed Forces; or

(ii) after June 30, 1985, is discharged or released from active duty (I) for a service-connected disability, for a medical condition which preexisted such service on active duty and which the Administrator determines is not service connected, or for hardship; (II) for the convenience of the Government, if the individual completed not less than 30 months of continuous active duty after that date, or (III) involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy;

(2) who completed the requirements of a secondary school diploma (or [equivalency certificate] *the equivalent as determined by the Secretary concerned, pursuant to regulations prescribed by the Secretary)* not later than—

(A) the original ending date of the individual's initial obligated period of active duty in the case of an individual described in clause (1)(A) of this subsection, regardless of whether the individual is discharged or released from active duty on such date; or

(B) December 31, 1989, in the case of an individual described in clause (1)(B) of this subsection;

except that an individual described in clause (1)(B) of this subsection may meet the requirement of this clause by having successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree; and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

* * * * * * *

§ 1412. Basic educational assistance entitlement for service in the Selected Reserve

(a) Except as provided in subsection (d) of this section, each individual—

(1) who—

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and—

(i) serves, as the individual's initial obligated period of active duty, at least two years of continuous active duty in the Armed Forces subject to subsection (b) of this section, characterized by the Secretary concerned as honorable service; and

(ii) subject to subsection (b) of this section and after completion of the service on active described in subclause (i) of this clause, serves at least four years of continuous duty in the Selected Reserve during which the individual participates staisfactorily in training as required by the Secretary concerned; or

(B) as of December 31, 1989, is eligible for educational assistance under chapter 34 of this title and was on active duty on October 19, 1984, and without a break in service since October 19, 1984, and—

(i) after June 30, 1985, serves at least two years of continuous active duty in the Armed Forces, subject to subsection (b) of this section, characterized by the Secretary concerned as honorable service; and

(ii) after June 30, 1985, subject to subsection (b) of this section and after completion of such two years of service, serves at least four continuous years in the Selected Reserve during which the individual participates satisfactorily in training as prescribed by the Secretary concerned;

(2) who, before completion of the service described in clause (1) of this subsection, has completed the requirements of a secondary school diploma (or [an equivalency certificate),] *the equivalent as determined by the Secretary concerned, pursuant*

to regulations prescribed by the Secretary), except that an individual described in clause (1)(B) of this subsection may meet the requirement of this clause by having successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree; and

(3) who, after completion of the service described in clause (1) of this subsection—

(A) is discharged from service with an honorable discharge, is placed on the retired list, or is transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service; or

(B) continues on active duty or in the Selected Reserve;

is entitled to basic educational assistance under this chapter.

* * * * * * *

SUBCHAPTER IV—TIME LIMITATION FOR USE OF ELIGIBILITY AND ENTITLEMENT; GENERAL AND ADMINISTRATIVE PROVISIONS

* * * * * * *

§ 1434. Program administration

(a)(1) Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), 1683, and 1685 of this title and the provisions of subchapters I and II of chapter 36 of this title (with the exception of sections 1780(c) *1780(f)*, [1780(g),] 1786(a), and 1787) shall be applicable to the provision of educational assistance under this chapter.

* * * * * * *

[(b) The Administrator may, pursuant to regulations which the Administrator shall prescribe, determine and define enrollment in, pursuit of, and attendance at, any program of education by an individual enrolled in or pursuing a program of education under this chapter for any period for which the individual receives educational assistance under this chapter. Subject to such reports and proof as the Administrator may require to show an individual's enrollment in and satisfactory pursuit of such individual's program, the Administrator may withhold payment of benefits to such individual until the required proof is received and the amount of the payment is appropriately adjusted.]

(b) Payment of educational assistance allowance in the case of an eligible individual pursuing a program of education under this chapter on less than a half-time basis shall be made in a lump-sum amount for the entire quarter, semester, or term not later than the last day of the month immediately following the month in which certification is received from the educational institution that such individual has enrolled in and is pursuing a program at such institution. Such lump-sum payment shall be computed at the rate determined under section 1432(b) of this title.

* * * * * * *

CHAPTER 31—TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

* * * * * * *

§ 1508. Allowances

(a)(1) * * *

* * * * * * *

(b) Except as otherwise provided in this section, the Administrator shall determine the subsistence allowance to be paid to a veteran under this chapter in accordance with the following table, which shall be the monthly amount shown in column II, III, IV, or V (whichever is applicable as determined by the veteran's dependency status) opposite the appropriate type of program being pursued as specified in column I:

Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$310	$384	$452	$33
Three-quarter time	233	288	339	25
Half-time	155	193	227	17
Farm cooperative, apprentice, or other on-job training:				
Full-time	271	327	377	24
Extended evaluation:				
Full-time	310	384	452	33
Independent living training:				
Full-time	310	384	452	33
Three-quarter-time	233	288	339	25
Half-time	155	193	227	17

Column I	*Column II*	*Column III*	*Column IV*	*Column V*
Type of program	*No dependents*	*One dependent*	*Two dependents*	*More than two dependents*
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	*$339*	*$420*	*$495*	*$36*
Three-quarter-time	*255*	*315*	*371*	*27*
Half-time	*170*	*211*	*249*	*19*
Farm cooperative, apprentice, or other on-job training:				
Full-time	*297*	*358*	*413*	*26*
Extended evaluation:				
Full-time	*339*	*420*	*495*	*36*
Independent living training:				
Full-time	*339*	*420*	*495*	*36*
Three-quarter-time	*255*	*315*	*371*	*27*

Column I	*Column II*	*Column III*	*Column IV*	*Column V*
Type of program	*No dependents*	*One dependent*	*Two dependents*	*More than two dependents*
Half-time	*170*	*211*	*249*	*19*

* * * * * * *

§ 1520. Program of independent living services and assistance

(a)[(1) During fiscal years 1982 through 1989, the] *The* Administrator may, under contracts with entities described in [paragraph (7) of this subsection,] *subsection (f) of this section,* or through facilities of the Department of Medicine and Surgery, which possess a demonstrated capability to conduct programs of independent living services for severely handicapped persons, provide, under regulations which the Administrator shall prescribe, programs of independent living services and assistance under this chapter, in various geographic regions of the United States, to veterans described in [paragraph (2) of this subsection.] *subsection (b) of this section.*

[(2)] *(b)* A program of independent living services and assistance may be made available under this section only to a veteran who has a service-connected disability described in section 1502(1)(A) of this title and with respect to whom it is determined under section 1506(d) of this title that the achievement of a vocational goal currently is not reasonably [feasible and who is selected pursuant to criteria provided for in regulations prescribed under paragraph (1) of this subsection.] *feasible.*

[(3)] *(c)* The Administrator shall, to the maximum extent feasible, include among those veterans who are provided with programs of independent living services and assistance under this section substantial numbers of veterans described in [paragraph (2) of this subsection] *subsection (b) of this section* who are receiving long-term care in Veterans' Administration hospitals and nursing homes and in nursing homes with which the Administrator contracts for the provision of care to veterans.

[(4)] *(d)* A program of independent living services and assistance for a veteran shall consist of such services described in sections 1504(a) and (b) of this title as the Administrator determines necessary to enable such veteran to achieve maximum independence in daily living. Such veteran shall have the same rights with respect to an individualized written plan of services and assistance as are afforded veterans under section 1507 of this title.

[(5) Any contract for services initiated with respect to any veteran under this section before the end of fiscal year 1989 may be continued in effect after the end of such year for the purposes of providing services and assistance to such veteran in accordance with the provisions of this chapter.]

[(6)] *(e)* Programs of independent living services and assistance shall be initiated for no more than five hundred veterans in each [of the fiscal years 1982 through 1989,] *fiscal year,* and the first priority in the provision of such programs shall be afforded to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of a service-connected disability.

[(7)**]** *(f)* Entities described in this **[**paragraph**]** *subsection* are (A) public or nonprofit agencies or organizations, and (B) for-profit entities in cases in which the Administrator determines that services comparable in effectiveness to services available from such an entity are not available, or cannot be obtained cost-effectively from, public or non-profit agencies or through facilities of the Department of Medicine and Surgery.

[(b) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives statistical data regarding veterans' participation in the program conducted under subsection (a) of this section during fiscal years 1987 and 1988 and any recommendations of the Administrator for administrative or legislative action or both regarding the program.**]**

* * * * * * *

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

* * * * * * *

SUBCHAPTER II—ELIGIBILITY; CONTRIBUTIONS; AND MATCHING FUND

§ 1621. Eligibility

(a) * * *

* * * * * * *

(f) An individual who serves in the Selected Reserve may not receive credit for such service under both the program established by this chapter and the program established by chapter 106 of title 10 but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) the program to which such service is to be credited.

* * * * * * *

SUBCHAPTER III—ENTITLEMENT; DURATION

* * * * * * *

§ 1633. Apprenticeship or other on-job training

(a) * * *

* * * * * * *

(b) In any month in which an individual pursuing a program of education consisting of a program of apprenticeship or other on-job training fails to complete 120 hours of training, the amount of the monthly benefit payment payable under this chapter to the individual shall be limited to the same proporiton of the applicable rate determined under subsection (a) of this seciton as the number of hours worked during such month, rounded to the nearest eight hours, bears to 120 hours.

(c) For each month that an individual is paid a monthly benefit payment under this chapter, the individuals entitlement under this chapter shall be charged at the rate of—

(1) 75 percent of a month in the case of payments made in accordance with subsection (a)(1) of this section;

(2) 55 percent of a month in the case of payments made in accordance with subsection (a)(2) of this section; and

(3) 35 percent of a month in the case of payments made in accordance with subsection (a)(3) of this section.

(d) For any month in which an individual fails to complete 120 hours of training, the entitlement otherwise chargeable under subsection (c) of this section shall be reduced in the same proportion as the monthly benefit payment payable is reduced under subsection (b) of this section.

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CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

* * * * * * *

SUBCHAPTER III—ENROLLMENT

1670. Selection of program.
1671. Applications; approval.
1673. Disapproval of enrollment in certain courses.
1674. Discontinuance for unsatisfactory [conduct] *attendance, conduct, or progress.*
1675. [REPEALED.]
1676. Education outside the United States.
1677. [REPEALED.]
1678. [REPEALED.]

* * * * * * *

SUBCHAPTER III—ENROLLMENT

* * * * * * *

§ 1674. Discontinuance for unsatisfactory [conduct] *attendance, conduct,* or progress

The Administrator shall discontinue the educational assistance allowance of an eligible veteran if, at any time, the Administrator finds that according to the regularly prescribed standards and practices of the educational institution, the veteran's [conduct] *attendance, conduct* or progress is unsatisfactory. The Administrator may renew the payment of the educational assistance allowance only if the Administrator finds that—

[(1) the cause of the unsatisfactory conduct or progress of the eligible veteran has been removed; and

[(2) the program which the eligible veteran now proposes to pursue (whether the same or revised) is suitable to the veteran's aptitudes, interests, and abilities.]

(1) the veteran will be resuming enrollment at the same educational institution in the same program of education and the educational institution has both approved such veteran's reenrollment and certified the reenrollment to the Department of Veterans Affairs; or

(2) in the case of a proposed change of either educational institution or program of education by the veteran—

(A) the cause of the unsatisfactory conduct or progress has been removed;

(B) the program proposed to be pursued is suitable to the veteran's aptitudes, interests, and abilities; and

(C) if a proposed change of program is involved, the change meets the requirements for approval under section 1791 of this title.

* * * * * * *

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

* * * * * * *

§ 1685. Veteran-student services

(a)*(1)* Veteran-students utilized under the authority of subsection (b) of this section shall be paid an additional educational assistance allowance (hereafter referred to as "work-study allowance"). Such work-study allowance shall be paid in an amount equal to [either] the amount of the *applicable* hourly minimum wage [in effect under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a))] times two hundred and fifty [or $625, whichever is the higher,] in return for such veteran-student's agreement to perform services, during or between periods of enrollment, aggregating two hundred and fifty hours during a semester or other applicable enrollment period, required in connection with (1) the outreach services program under subchapter IV of chapter 3 of this title as carried out under the supervision of a Veterans' Administration employee, (2) the preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Veterans' Administration, (3) the provision of hospital and domiciliary care and medical treatment under chapter 17 of this title, [or] (4) any other activity of the Veterans' Administration as the Administrator shall determine [appropriate.] *appropriate, or in the case of a veteran-student who is receiving educational assistance under chapter 106 of title 10, activities relating to the administration of such chapter at Department of Defense facilities.* An agreement may be entered into for the performance of services for periods of less than two hundred and fifty hours. The amount of the work-study allowance to be paid under any such agreement shall be determined by multiplying the number of hours of work performed by the veteran-student under such agreement times [either] the *applicable* hourly minimum [wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 during the period the work is to be performed or $2.50, whichever is the higher.] *wage.* A veteran-student shall be paid in advance an amount equal to 40 [per centum] *percent* of the total amount of the work-study allowance agreed to be paid under the agreement in return for the veteran-student's agreement to perform the number of hours of work specified in the agreement.

(2) For the purposes of paragraph (1) of this subsection, the term "applicable hourly minimum wage" means the hourly minimum

wage under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) or the hourly minimum wage under comparable law of the State in which the services are to be performed, whichever is higher.

(b) Notwithstanding any other provision of law, the Administrator shall utilize, in connection with the activities specified in subsection (a) of this section, the services of veteran-students who *(1)* are pursuing full-time programs of [rehabilitation, education,] *education* or training under chapter 30, [31, 32] *32,* or 34 of this [title.] *title or chapter 106 of title 10, (2) have service-connected disabilities rated at 30 percent or more and are pursuing programs of education or training on at least a half-time basis under chapter 30, 32, or 34 of this title, or (3) are pursuing programs of rehabilitation on at least a half-time basis under chapter 31 of this title (excluding programs where pursuit is based on limited work tolerance).* In carrying out this section, the Administrator, wherever feasible, shall give priority to veterans with disabilities rated at 30 [per centum] *percent* or more for purposes of chapter 11 of this title. In the event the veteran ceases to be a [full-time student] *veteran-student as described in clause (1), (2), or (3) of this subsection* before completing such agreement, the veteran may, with the approval of the Administrator, be permited to complete such agreement.

* * * * * * *

(e) For the purposes of this section, the terms "veteran" and "veteran-student" include a person receiving educational assistance under chapter 106 of title 10.

* * * * * * *

CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

1731. Educational assistance allowance.
1732. Computation of educational assistance allowance.
1733. Special assistance for the educationally disadvantaged.
1734. Apprenticeship or other on-job training; correspondence courses.
1735. Approval of courses.
1736. Specialized vocational training courses.
1737. [REPEALED.] *Work-study allowance.*
1738. [REPEALED.]

* * * * * * *

SUBCHAPTER III—PROGRAM OF EDUCATION

* * * * * * *

§ 1724. Discontinuance for unsatisfactory progress

The Administrator shall discontinue the educational assistance allowance on behalf of an eligible person if, at any time, the Administrator finds that according to the regularly prescribed standards and practices of the educational institution such person is attending, the person's [conduct] *attendance, conduct,* or progress is unsatisfactory. The Administrator may renew the payment of the educational assistance allowance only if the Administrator finds that—

(1) the clause of the unsatisfactory [conduct] *attendance, conduct,* or progress of the eligible person has been removed; and

(2) the program which the eligible person now proposes to pursue (whether the same or revised) is suitable to the person's aptitudes, interests, and abilities.

* * * * * * *

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE PERSONS

* * * * * * *

§ 1732. Computation of educational assistance allowance

(a)(1) The educational assistance allowance on behalf of an eligible person who is pursuing a program of education consisting of institutional courses shall be computed at *109.5 percent of* the rate prescribed in section 1682(a)(1) of this title for full-time, three-quarter-time, or half-time pursuit, as appropriate, of an institutional program by an eligible veteran with no dependents.

(2) The educational assistance allowance on behalf of an eligible person pursuing a program of education on less than a half-time basis shall be computed at [the rate prescribed in section 1682(b)(2) of this title for less-than-half-time pursuit of an institutional program by an eligible veteran.] *the lesser of (A)* the rate determined under clause (A) of section 1682(b) of this title, or (*B*) 109.5 percent of the rate provided in clause (B) of such section 1682(b).

(b) The educational assistance allowance to be paid on behalf of an eligible person who is pursuing a full-time program of education which consists of institutional courses and alternate phases of training in a business or industrial establishment with the training in the business or industrial establishment being strictly supplemental to the institutional portion, shall be computed at the rate of [$304] *$333* per month.

(c)(1)* * *

* * * * * * *

(2) The monthly educational assistance allowance to be paid on behalf of an eligible person pursuing a farm cooperative program under this chapter shall be computed at *109.5 percent of* the rate prescribed in section 1682(c)(2) of this title for full-time, three-quarter-time, or half-time pursuit, as appropriate, of a farm cooperative program by an eligible veteran with no dependents.

(3) The monthly educational assistance allowance to be paid on behalf of an eligible person pursuing an independent study program which leads to a standard college degree shall be computed at [the rate prescribed in section 1682(e) of this title.] *the lesser of (A) the rate determined under clause (A) of section 1682(b) of this title, or (B) 109.5 percent of the rate provided in clause (B) of such section 1682(b). Section 1682(e) of this title, except for the first sen-*

tence, shall apply to the educational assistance allowance computed under this paragraph.

* * * * * * *

[(e) In] *(e)(1) Subject to paragraph (2) of this subsection, in* the case of an eligible person who is pursuing a program of education under this chapter while incarcerated in a Federal, State, or local penal institution for conviction of a felony, the educational assistance allowance shall be paid in the same manner prescribed in section 1682(g) of this title for incarcerated veterans.

(2) For the purposes of paragraph (1) of this subsection, the amounts of the monthly educational assistance allowances prescribed in subsection (a)(1) and (c)(2) of section 1682 of this title and in section 1787(b)(1) of this title, as referred to in section 1682(g) of this title, for a veteran with no dependents shall be deemed to be equal to 109.5 percent of the amounts so prescribed.

(f) In the computation of an educational assistance allowance under this section, any amount of 50 cents or more shall be rounded to the next higher dollar and any amount of 49 cents or less shall be rounded to the next lower dollar.

* * * * * * *

§ 1737. Work-study allowance

(a) Subject to subsection (b) of this section, the Secretary shall utilize, in connection with the activities described in section 1685(a) of this title, the services of any eligible person who is pursuing, in a State, a full-time program of education (other than a course of special restorative training) and shall pay to such person an additional educational assistance allowance (hereafter in this section referred to as "work-study allowance") in return for such eligible person's agreement to perform such services. The amount of the work-study allowance shall be determined in accordance with section 1685(a) of this title.

(b) The Secretary's utilization of, and payment of a work-study allowance for, the services of an eligible person pursuant to subsection (a) of this section shall be subject to the same requirements, terms, and conditions are set out in section 1685 of this title with regard to veteran-students pursuing full-time programs of education referred to in subsection (b) of such section.

* * * * * * *

CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

* * * * * * *

SUBCHAPTER I—STATE APPROVING AGENCIES

* * * * * * *

§ 1774. Reimbursement of expenses

(a)(1) * * *

* * * * * * *

(2)(A) The Administrator shall, effective at the beginning of fiscal year 1988, make payments to State and local agencies, out of amounts available for the payment of readjustment benefits, for the reasonable and necessary expenses of salary and travel incurred by employees of such agencies in carrying out contracts or agreements entered into under this [section] *section, for expenses incurred in carrying out activities described in section 1774A(a)(4) of this title (except for administrative overhead expenses allocated to such activities),* and for the allowance for administrative expenses described in subsection (b).

*   *   *   *   *   *   *

(C) Subject to paragraph (4) of this subsection, the amount of any such payment made to an agency for any period shall be equal to the amount of the reasonable and necessary expenses of salary and travel certified by such agency for such period in accordance with paragraph (3) of this subsection plus the allowance for administrative expenses described in subsection [(b).] *(b) and the amount of expenses incurred in carrying out activities described in section 1774A(a)(4) of this title for such period (except for administrative overhead expenses allocated to such activities).*

*   *   *   *   *   *   *

§1775. Approval of accredited courses

(a) * * *

*   *   *   *   *   *   *

(b) As a condition to approval under this section, the State approving agency must find that adequate records are kept by the educational institution to show the progress of each eligible person or veteran and must include as a minimum (except for [attendance)] *attendance if the education institution does not have a formal policy or regulations specifying minimum satisfactory attendance standards required for a student to avoid interruption of a course, loss of credit, or dismissal)* the requirements set forth in section 1776(c)(7) of this title. The State approving agency must also find that the educational institution maintains a written record of the previous education and training of the eligible person or veteran and clearly indicates that appropriate credit has been given by the institution for previous education and training, with the training period shortened proportionately and the eligible person or veteran and the Administrator so notified.

*   *   *   *   *   *   *

§1780. Payment of educational assistance of subsistence allowances

Period for Which Payment May Be Made

(a) Payment of educational assistance or subsistence allowances to eligible veterans or eligible persons pursuing a program of education or training, other than a program by correspondence, in an educational institution under chapter 31, 34, or 35 of this title shall be paid as provided in this section and, as applicable, in section

1508, 1582, 1691, or 1732 of this title. Such payments shall be paid only for the period of such veterans' or persons' enrollment in, and pursuit of, such program, but no amount shall be paid—

(1) to any eligible veteran or eligible person enrolled in a course [which leads to a standard college degree, or a course that meets the requirements of section 1788(a)(7) of this title,] *approved pursuant to section 1775 of this title* for any period when such veteran or person is not pursuing such veteran's or person's course in accordance with the regularly established policies and regulations of the educational institution, with the provisions of such regulations as may be prescribed by the Administrator pursuant to subsection (g) of this section, and with the requirements of this chapter or of chapter 34 or 35 of this title, but payment may be made for an actual period of pursuit of one or more unit subjects pursued for a period of time shorter than the enrollment period at the educational institution;

(2) to any eligible veteran or eligible person enrolled in a course [which does not lead to a standard college degree (excluding courses that meet the requirements of section 1788(a)(7) of this title and program of apprenticeship and programs of other on-job training authorized by section 1787 of this title) for any day of absence in excess of thirty days in a twelve-month period, not counting as absences weekends or legal holidays (or customary vacation periods connected therewith) established by Federal or State law (or in the case of the Republic of the Philippines, Philippine law) during which the institution is not regularly in session and periods (not to exceed five days in any twelve-month period) when the institution is not in session because of teacher conferences or teacher training sessions;] *approved pursuant to section 1776 of this title for any period for which the Secretary finds, pursuant to section 1674 or 1724 of this title, that such veteran's or person's attendance, conduct, or progress is unsatisfactory or that such veteran or person is not pursuing that course in accordance with (A) the provisions of such regulations as the Secretary may prescribe pursuant to subsection (g) of this section, and (B) the requirements of this chapter or of chapter 34 or 35 of this title;*

(3) to any eligible veteran or person for auditing a course;

(4) to any eligible veteran or person for a course for which the grade assigned is not used in computing the requirements for graduation including a course from which the student withdraws unless the Administrator finds there are mitigating circumstances, except that, in the first instance of withdrawal by an eligible veteran or person from a course or courses with respect to which such veteran or person has been paid assistance under this title, mitigating circumstances shall be considered to exist with respect to courses totaling not more than six semester hours or the equivalent thereof; or

(5) to any eligible veteran or person for pursuit of a program of education exclusively by correspondence as authorized under section 1786 of this title or for the pursuit of a correspondence portion of a combination correspondence-residence course leading to a vocational objective where the normal period of time

required to complete the course must be made to the Administrator by the educational institution.

Notwithstanding the foregoing, the Administrator may, subject to such regulations as the Administrator shall prescribe, continue to pay allowances to eligible veterans and eligible persons enrolled in courses set forth in clause (1) or (2) of this subsection—

(A) during periods when the schools are temporarily closed under an established policy based upon an Executive order of the President or due to an emergency [situation, and such periods shall not be counted as absences for the purposes of clause (2) of this subsection;] *situation;*

(B) during periods between consecutive school terms where such veterans or persons transfer from one approved educational institution to another approved educational institution for the purpose of enrolling in and pursuing a similar course at the second institution if the period between such consecutive terms does not exceed 30 [days, but such periods shall be counted as absences for the purposes of clause (2) of this subsection;] *days;* or

(C) during periods between a semester, term, or quarter where the educational institution certifies the enrollment of the eligible veteran or eligible person on an individual semester, term, or quarter basis if the interval between such periods does not exceed 1 full calendar [month, but such periods shall be counted as absences for the purposes of clause (2) of this subsection.] *month.*

* * * * * * *

Determination of Enrollment, Pursuit, and Attendance

(g) The [Administrator] *Secretary* may, pursuant to regulations which the [Administrator] *Secretary* shall prescribe, determine and define enrollment in, pursuant of, and attendance at, any program of education or training or course by an eligible veteran or eligible person for any period for which the veteran or person receives an educational assistance or subsistence allowance under this chapter for pursuing such program or course. Subject to such reports and proof as the [Administrator] *Secretary* may require to show an eligible veteran's or eligible person's enrollment in and satisfactory pursuit of such person's program, the [Administrator is authorized to] *Secretary* may withhold [the final] payment of benefits to such eligible veteran or eligible person until the required proof is received and the amount of the [final] payment is appropriately adjusted. *The Secretary may accept such veteran's or person's monthly certification of enrollment in and satisfactory pursuit of such veteran's or person's program as sufficient proof of the certified matters.*

(h) Mitigating circumstances referred to in subsection (a)(4) include the suspension of the pursuit of a program of education, or withdrawal from a course or courses, by an eligible veteran or eligible person in order for such veteran or person personally to furnish child care for the veteran's or person's child if the necessity for personally furnishing such child care results from difficulties, beyond

the control of such veteran or person, in making or changing child-care arrangements.

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

* * * * * * *

§ 1784. Reports by veterans, eligible persons, and institutions; reporting fee

(a)(1) Except as provided in paragraph (2) of this subsection, the veteran or eligible person and the educational institution offering a course in which such veteran or eligible person is enrolled under chapter *31,* 34, 35, or 36 of this title shall, without delay, report to the Administrator, in the form prescribed by the Administrator, such enrollment and any interruption or termination of the education of each such veteran or eligible person. The date of such interruption or termination will be the last date of pursuit, or, in the case of correspondence training, the last date a lesson was serviced by a school.

* * * * * * *

(b) The Administrator, prior to making payment of a reporting fee to an educational institution, as provided for in subsection (c) of this section, shall require such institution to certify that it has exercised reasonable diligence in determining whether such institution or any course offered by such institution approved for the enrollment of veterans or eligible persons meets all of the applicable requirements of chapter *31,* 34, 35, and 36 of this title and that it will, without delay, report any failure to meet any such requirement to the Administrator.

(c) The Administrator may pay to any eduational institution, or to any joint apprenticeship training committee acting as a training establishment, furnishing education or training under either this chapter or chapter **[**34**]** *31, 34,* or 35 of this title, a reporting fee which will be in lieu of any other compensation or reimbursement for reports or certifications which such educational institution or joint apprenticship training committee is required to submit to the Administrator by law or regulation. Such reporting fee shall be computed for each calendar year by multiplying $7 by the number of eligible veterans or eligible persons enrolled under this chapter or chapter **[**34**]** *31, 34,* or 35 of this title, or $11 in the case of those eligible veterans and eligible persons whose educational assistance checks are directed in care of each institution for temporary custody and delivery and are delivered at the time of registration as provided under section 1780(d)(4) of this title, on October 31 of that year; except that the Administrator may, where it is established by such educational institution or joint apprenticeship training committee that eligible veteran plus eligible person enrollment on such date varies more than 15 percent from the peak eligible veteran enrollment plus eligible person enrollment in such educational institution or joint apprenticeship training committee during such calendar year, establish such other date as representative of the peak enrollment as may be justified for such educational institution or joint apprenticeship training committee. The reporting fee shall be paid to such educational institution or joint apprenticeship training committee as soon as feasible after the end of the calendar year for which it is applicable. No reporting fee payable to an educational institution under this subsection shall be subject to offset by the Administrator against any liability of such institution for any overpayment for which such institution may be administratively determined to be liable under section 1785 of this title unless such liability is not contested by such institution or has been upheld by a final decree of a court of appropriate jurisdiction.

§ 1785. Overpayments to eligible persons or veterans

(a) * * *

* * * * * * *

(b) Whenever the Administrator finds that an overpayment has been made to a veteran or eligible person as the result of (1) the willful or negligent failure of an educational institution to report, as required under this chapter or chapter 34 or 35 of this title, to the Veterans' Administration [excessive absences from a course, or] discontinuance or interruption of a course by the veteran or eligible person, or (2) the willful or negligent false certification by an educational institution, the amount of such overpayment shall constitute a liability of the educational institution to the United States.

* * * * * * *

§ 1788. Measurement of courses

(a) * * *

* * * * * * *

[(e) For the purpose of determining whether a course—

[(1) which is offered by an institution of higher learning, and

[(2) for which such institution requires one or more unit courses or subjects for which credit is granted toward a standard college degree

will, during the semester (or quarter or other applicable portion of the academic year) when such unit course or subject is being pursued, be considered full time under clause (1) or (2) of subsection (a) of this section, each of the numbers of hours specified in such clause shall be deemed to be reduced, during such semester (or other portion of the academic year), by the percentage described in the following sentence and rounded as the administrator may prescribe. Such percentage is the percentage that the number of semester hours (or the equivalent thereof) represented by such unit course or subject is of the number of semester hours (or the equivalent thereof) which, under clause (4) of such subsection, constitutes a fulltime institutional undergraduate course at such institution.]

(e)(1) For the purpose of measuring clock hours of attendance or net of instruction under clause (1) or (2), respectively, of subsection (a) of this section for a course—

(A) which is offered by an institution of higher learning, and

(B) for which the institution requires one or more unit courses or subjects for which credit is granted toward a standard col-

lege degree pursued in residence on a standard quarter- or semester-hour basis,

the number of credit hours (semester or quarter hours) represented by such unit courses or subjects shall, during the semester, quarter, or other applicable portion of the academic year when pursued, be converted to equivalent clock hours, determined as prescribed in paragraph (2) of this subsection. Such equivalent clock hours then shall be combined with actual weekly clock hours of training concurrently pursued, if any, to determine the total clock hours of enrollment.

(2) For the purpose of determining the clock-hour equivalency described in paragraph (1) of this subsection, the total number of credit hours being pursued will be multiplied by the factor resulting from dividing the number of clock hours which constitute full time under clause (1) or (2) of subsection (a) of this section, as appropriate, by the number of semester hours (or the equivalent thereof) which, under clause (4) of such subsection, constitutes a full-time institutional undergraduate course at such institution.

§ 1789. Period of operation for approval

(a) * * *

* * * * * * *

(b) Subsection (a) shall not apply to—

(1) any course to be pursued in a public or other tax-supported educational institution;

(2) any course which is offered by an educational institution which has been in operation for more than two years, if such course is similar in character to the instruction previously given by such institution;

(3) any course which has been offered by an institution for a period of more than two years, notwithstanding the institution has moved to another location within the same general locality, or has made a complete move with substantially the same faculty, curricula, and students, without change in ownership;

(4) any course which is offered by a nonprofit educational institution of college level and which is recognized for credit toward a standard college degree;

(5) any course offered by a proprietary nonprofit educational institution which qualifies to carry out an approved program of education under the provisions of subchapter V of chapter 34 of this title (including those courses offered at other than the institution's principal location) if the institution offering such course has been in operation for more than two years; or

(6) any course offered by an educational institution under a contract with the Department of Defense that (A) is given on, or immediately adjacent to, a military base; (B) is available only to active duty military personnel and/or their dependents *and members of the Selected Reserve of the Ready Reserve eligible for educational assistance under chapter 106 of title 10;* and (C) has been approved by the State approving agency of the State in which the base is located.

The Administrator may waive the requirements of clause (6) of this subsection, in whole or in part, if the Administrator determines, pursuant to regulations which the Administrator shall prescribe, it to be in the interest of the eligible veteran and the Federal Government.

§ 1790. Overcharges by educational institutions; discontinuance of allowances; examination of records; false or misleading statements

Overcharges by Educational Institutions

(a) If the Administrator finds that an educational institution has—

(1) charged or received from any eligible veteran or eligible person pursuing a program of education under this chapter or chapter 34 or 35 of this title any amount for any course in excess of the charges for tuition and fees which such institution requires similarly circumstanced nonveterans not receiving assistance under such chapters who are enrolled in the same course to pay, or

(2) instituted, after October 24, 1972, a policy or practice with respect to the payment of tuition, fees, or other charges in the case of eligible veterans and the Administrator finds that the effect of such policy or practice substantially denies to veterans the benefits of the advance [and prepayment] allowances under such section,

The Administrator may disapprove such educational institution for the enrollment of any eligible veteran or eligible person not already enrolled therein under this chapter or chapter 31, 34, or 35 of this title.

Discontinuance of Allowances

(b)(1) * * *

* * * * * * *

(3)(A) The Administrator may suspend educational assistance to eligible veterans and eligible persons already enrolled, and may disapprove the enrollment or reenrollment of any eligible veteran or eligible person, in any course as to which the Administrator has evidence showing a substantial pattern of eligible veterans or eligible persons, or both, who are receiving such assistance by virtue of their enrollment in such course but who are not entitled to such assistance because (i) the course approval requirements of this chapter are not being met, or (ii) the educational institution offering such course has violated one or more of the recordkeeping or reporting requirements of this chapter or chapter *30,* 32, 34, or 35 of this title.

* * * * * * *

§ 1791. Change of program

(a) **[**Except as provided in subsections (b) and (c) of this section, each**]** *An* eligible veteran and *an* eligible person **[**may make not more than one**]** *who has not made a* change of program of **[**education, but**]** *education pursued by such veteran or person, as the case may be, may make one such change without the approval of the Sec-*

retary. Except as provided in subsections (b) and (c) of this section, an eligible veteran or eligible person whose program has been interrupted or discontinued due to the veteran's or person's own misconduct, the veteran's or person's own neglect, or the veteran's or person's own lack of application shall not be entitled to any such change.

(b) [The Administrator may approve one additional change (or an initial change in the case of a veteran or person not eligible to make a change under subsection (a)) in program if the Administrator finds that—] *The Secretary may approve any change in program (including any change in the case of a veteran or person not entitled to make a change under subsection (a) of this section) if the Secretary finds—*

(1) the program of education which the eligible veteran or eligible person proposes to pursue is suitable to the veteran's or person's aptitudes, interests, and [abilities;] *abilities, determined, in the case of each change after the eligible veteran's or eligible person's first change, as provided in subsection (d) of this section;* and

(2) in any instance where the eligible veteran or eligible person has interrupted, or failed to progress in, the veteran's or person's program due to the veteran's or person's own misconduct, the veteran's or person's own neglect, or the veteran's or person's own lack of application, there exists a reasonable likelihood with respect to the program which the eligible veteran or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress.

(c) The [Administrator] *Secretary* may also approve [additional changes in] *any change of* program *of education* if the [Administrator] *Secretary* finds such [changes are] *change is* necessitated by circumstances beyond the control of the eligible veteran or eligible person.

(d) The Secretary may approve a second or subsequent change of program of education by an eligible veteran or eligible person only if—

(1) the veteran or person accepts educational or vocational counseling services referred to in section 1663 of this title; and

(2) the Secretary determines, on the basis of the results of the educational or vocational counseling, that the change is suited to the veteran's or person's aptitudes, interests, and abilities.

[(d)]*(e)* As used in this section the term "change of program of education" shall not be deemed to include a change from the pursuit of one program to pursuit of another where the first program is prerequisite to, or generally required for, entrance into pursuit of the second.

* * * * * * *

CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

* * * * * * *

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

1820. Powers of Administrator.
1821. Incontestability.

1822. [REPEALED.]
1823. Direct loan revolving fund.
1824. Loan guaranty revolving fund.
1824A. Home Loan Guaranty Fund.
1825. Waiver of discharge requirements for hospitalized persons.
1826. Withholding of payments, benefits, etc.
1827. Expenditures to correct or compensate for structural defects in mortgaged homes.
1828. Exemption from State anti-usury provisions.
1829. Loan fee.
1830. Use of attorneys in court.
1831. Appraisals.
1832. Procedure on default.
1833. Property Management.
1834. Annual Submission of Information on the Loan Guaranty Revolving Fund and the Home Loan Guaranty Fund.

* * * * * * *

SUBCHAPTER I—GENERAL

* * * * * * *

§ 1802. Basic entitlement

(a)(1) * * *

* * * * * * *

(2) the veterans referred to in the first sentence of paragraph (1) of this subsection are the following:

(A) Each veteran who served on active duty at any time during World War II, the Korean conflict, or the Vietnam era and whose total service was for 90 days or more.

(B) Each veteran who after September 15, 1940, was discharged or released from a period of active duty for a service-connected disability.

(C) Each **[**veteran,**]** *person* other than a veteran described in clause (A) or (B) of this paragraph, who—

(i) *is a veteran who* served after July 25, 1947, for a period of more than 180 days and was discharged or released therefrom under conditions other than dishonorable; or

(ii) has served more than 180 days in active duty status and continues on active duty without a break **[**therein.**]** *therein, without regard to whether such person has been discharged or released from active duty*

* * * * * * *

§ 1803. Basic provisions relating to loan guaranty and insurance

(a)(1)(A) * * *

* * * * * * *

(B) **[**The**]** *Except in the case of an election pursuant to paragraph (3)(A) of this subsection, the* maximum amount of guaranty entitlement available to a veteran for purposes specified in section 1810 of this title shall be $36,000 reduced by the amount of entitlement previously used by the veteran under this chapter and not restored as a result of the exclusion in section 1802(b) of this title.

* * * * * * *

(3)(A) Subject to subparagraphs (B) and (C) of this paragraph, the maximum amount of guaranty entitlement available to a veteran for purposes specified in clauses (1), (2), (3), and (6) of section 1810(a) of this title, may, upon the election of the veteran, be increased by not more than $5,000 in connection with a specific loan. The Secretary shall collect from that veteran a fee equal to 0.1 percent of the total loan amount for each $1,000 (and fraction of $1,000) by which the veteran elects to increase that maximum amount.

(B) The total amount of the guaranty entitlement available to a veteran in connection with a loan for a purchase or construction may not be increased pursuant to subparagraph (A) of this paragraph by an amount which would cause the sum of the guaranty and any downpayment to exceed 25 percent of the price of the purchase or construction.

(C) The Secretary may waive the limitation in subparagraph (B) of this paragraph in the case of a loan for the purchase or construction of housing whenever the Secretary determines, in accordance with regulations prescribed by the Secretary, that the housing is being purchased or constructed in a housing market area for which it is the general practice of lenders, in the case of loans to be guaranteed under this chapter, to require the payment of points in, or to discount the loans by, such large amounts as to make it unlikely that a veteran could obtain such a loan for the purchase or construction of housing in such market area.

(D) The amount of the fee imposed by subparagraph (A) of this paragraph may be included in the loan and paid from the proceeds thereof.

* * * * * * *

(E) Any individual who pays a fee under section 1829 of this title, or is exempted under section 1829(c) from paying such fee, after September 30, 1989, with respect to a housing loan (other than a loan made under section 1833(a) of this title) shall have no liability to the Secretary with respect to the loan for any loss resulting from any default of such individual except in the case of (1) fraud, misrepresentation, or bad faith by the individual in obtaining the loan or approval of an assumption of the loan or in connection with the loan default, or (2) a default or liquidation resulting from circumstances within the individual's control.

* * * * * * *

SUBCHAPTER II—LOANS

§ 1810. Purchase or construction of homes

(a) * * *

* * * * * * *

(b) No loan may be guaranteed under this section or made under section 1811 of this title unless—

(1) the proceeds of such loan will be used to pay for the property purchased, constructed, or improved;

(2) the contemplated terms of payment required in any mortgage to be given in part payment of the purchase price or the

construction cost bear a proper relation to the veteran's present and anticipated income and expenses;

(3) the veteran is a satisfactory credit risk, as determined in accordance with the credit underwriting standards established pursuant to subsection (g) of this section;

(4) the nature and condition of the property is such as to be suitable for dwelling purposes;

(5) *except in the case of a loan described in clause (7) or (8) of this subsection,* the loan to be paid by the veteran for such property or for the cost of construction, repairs, or alterations, does not exceed the reasonable value thereof as determined pursuant to section 1831 of this title; [and,]

(6) if the loan is for repair, alteration, or improvement of property, such repair, alteration, or improvement substantially protects or improves the basic livability or utility of such [property.] *property;*

(7) in the case of a loan (other than a loan made for a purpose specified in subsection (a)(8)) that is made to refinance a construction loan, an installment land sales contract, or a loan assumed by the veteran and that provides for a lower interest rate than the loan being refinanced, the amount of the loan to be guaranteed or made does not exceed the lesser of—

(A) the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 1831 of this title; or

(B) the sum of the outstanding balance on the loan to be refinanced and the closing costs (including discounts) actually paid by the veteran, as specified by the Secretary in regulations; and

(8) in the case of a loan to refinance a loan other than a loan or installment sales contract described in clause (7), the amount of the loan to be guaranteed or made does not exceed 90 percent of the reasonable value of the dwelling or farm residence securing the loan, as determined pursuant to section 1831 of this title.

* * * * * * *

[(h) The amount of a loan guaranteed for the purpose specified in subsection (a)(5) of this section may not exceed the amount equal to 90 percent of the appraised value of the dwelling or farm residence which will secure the loan, as determined by the Administrator.]

* * * * * * *

SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

* * * * * * *

§ 1824. Loan guaranty revolving fund

(a) * * *

* * * * * * *

(b) The Fund shall be available to the Administrator when so provided in appropriation Acts and within such limitations as may be included in such Acts, without fiscal year limitation, for all housing loan guaranty and insurance operations under this chapter, except administrative [expenses.] *expenses and the operations carried out in connection with the Home Loan Guaranty Fund established by section 1824A*. For purposes of this subsection, the term "administrative expenses" shall not include expenses incurred by the Administrator for appraisals performed after February 1, 1986, on a contractual basis in connection with the liquidation, of housing loans guaranteed, insured, or made under this chapter.

(c) There shall be deposited in the Fund (1) by transfer from current and future appropriations for readjustment benefits such amounts as may be necessary to supplement the Fund in order to meet the requirements of the Fund, (2) amounts received by the Administrator as fees collected under section 1829 of this [title,] *title before October 1, 1989,* and (3) all amounts now held or hereafter received by the Administrator incident to housing loan guaranty and insurance operations under this [chapter,] *chapter with respect to housing loans guaranteed or insured under this chapter before October 1, 1989,* including but not limited to all collections of principal and interest and the proceeds from the use of property held or the sale of property disposed of.

* * * * * * *

§ 1824A. Home Loan Guaranty Fund

(a) There is hereby established in the Treasury of the United States a revolving fund known as the Home Loan Guaranty Fund (hereinafter referred to as the "Guaranty Fund").

(b) The Guaranty Fund shall be available to the Secretary for all operations (other than administrative expenses) carried out with respect to (1) housing loans guaranteed or insured under this chapter which are made after September 30, 1989, and (2) loans to which section 1814 of this title applies and which are assumed after such date.

(c)(1) All fees collected under sections 1803(2)(3)(A) and 1829 of this title after September 30, 1989, shall be credited to the Guaranty Fund.

(2) There shall also be credited to the Guaranty Fund—

(A) for each housing loan guaranteed or insured under this chapter after September 30, 1989, an amount equal to 0.25 percent of the original amount of such loan for each of the three fiscal years beginning with the fiscal year in which such loan is guaranteed or insured (except in the case of a loan guaranteed or insured during fiscal year 1990, for which such amount shall be credited for each of the three fiscal years beginning with fiscal year 1991);

(B) all collections of principal and interest and the proceeds from the use of property held, or from the sale of property disposed of, with respect to loans to which subsection (b) of this section applies;

(C) amounts required to be credited under section 1829(c) of this section; and

(D) all income from the investments described in subsection (d) of this section.

(d)(1) The Secretary of the Treasury shall invest the portion of the Guaranty Fund that is not required to meet current payments made from the Guaranty Fund, as determined by the Secretary of Veterans Affairs, in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) In making investments under paragraph (1) of this subsection, the Secretary of the Treasury shall select obligations having maturities suitable to the needs of the Guaranty Fund, as determined by the Secretary of Veterans Affairs, and bearing interest at suitable rates, as determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

* * * * * * *

§ 1829. Loan fee

[(a) Except as provided in subsection (b) of this section, a fee shall be collected from each veteran obtaining a housing loan guaranteed, made, or insured under this chapter, and from each person obtaining a loan from the Administrator to finance the purchase of real property from the Administrator, and no such loan may be guaranteed, made, or insured under this chapter until the fee payable with respect to such loan has been remitted to the Administrator. The amount of the fee shall be one percent of the total loan amount. The amount of the fee may be included in the loan and paid from the proceeds thereof.

[(b) A fee may not be collected under this section from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse of any veteran (including a person who died in the active military, naval, or air service) who died from a service-connected disability.

[(c) A fee may not be collected under this section with respect to any loan closed after September 30, 1989.

[(d) Except as provided in subsection (b) of this section, a fee shall be collected from a person assuming a loan to which section 1814 of this chapter applies. The amount of the fee shall be equal to one-half of one percent of the balance of such loan on the date of the transfer of the property.]

(a)(1) Except as provided in subsection (c), a fee shall be collected from each veteran obtaining a housing loan guaranteed or insured under this chapter, and from each person obtaining a loan under section 1833(a) of this title, and no such loan may be guaranteed, made, or insured under this chapter until the fee payable under this section has been remitted to the Secretary.

(2) The amount of such fee shall be 1.25 percent of the total loan amount, except that—

(A) in the case of a loan made under section 1833(a) of this title, the amount of such fee shall be one percent of the total loan amount;

(B) in the case of a guaranteed or insured loan for a purchase (except for a purchase referred to in section 1812(a) of this title),

or for construction, with respect to which the veteran has made a downpayment of not less than 5 percent of the total purchase price or construction cost, the amount of such fee shall be 0.75 percent of the total loan amount;

(C) in the case of a guaranteed or insured loan for a purchase (except for a purchase referred to in section 1812(a) of this title), or for construction, with respect to which the veteran has made a downpayment of not less than 10 percent of the total purchase price or construction cost, the amount of such fee shall be 0.25 percent of the total loan amount; and

(D) in the case of a guaranteed or insured loan for a purchase referred to in section 1812(a) of this title with respect to which the veteran has made a downpayment of not less than 10 percent of the total purchase price, the amount of such fee shall be 0.75 percent of the total loan amount.

(3) The amount of the fee may be included in the loan and paid from the proceeds thereof.

(b) Except as provided in subsection (c) of this section, a fee shall be collected from a person assuming a loan to which section 1814 of this title applies. The amount of the fee shall be equal to 0.75 percent of the balance of the loan on the date of the transfer of the property.

(c)(1) A fee may not be collected under this section from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse of any veteran (including a person who died in the active military, naval, or air service) who died from a service-connected disability. There shall be credited to the Home Loan Guaranty Fund, on behalf of such veteran or surviving spouse (in addition to the amount required to be credited to such fund under section 1824A(c)(2)(A) of this title), the amount equal to the fee that, except for this subsection, would be collected from such veteran or surviving spouse.

(2) Credits to the Home Loan Guaranty Fund under paragraph (1) of this subsection with respect to loans, guaranteed, insured, or made under this chapter during fiscal year 1990 shall be made in October 1990.

(d)(1) Subject to paragraphs (2) and (3) of this subsection, the Secretary may increase each fee percentage specified in subsections (a) and (b) of this section, or each such fee percentage as previously increased under this paragraph, if the Secretary determines, on the basis of economic projections and analyses, that the Home Loan Guaranty Fund would, except for such increase, be unable to pay the valid claims of holders of defaulted loans during the first 24 months that such increase is to be in effect. In exercising the authority under this paragraph, the Secretary shall increase all such fee percentages by multiplying each such fee percentage by the same factor.

(2) An increased percentage prescribed by the Secretary under paragraph (1) of this subsection for a fee required to be collected under subsection (a) or (b) of this section may not exceed the percentage determined by multiplying the percentage specified for such fee in that subsection by 1.2.

(3) The Secretary may not in any fiscal year increase fee percentages under paragraph (1) of this subsection unless the Secretary first submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing the Secretary's determination to increase the fee percentages, the factor by which the fee percentages are to be increased, and the economic projections and analyses on which the Secretary bases such determination. Any such report shall be submitted not later than the day on which the President, pursuant to section 1105 of title 31, submits to the Congress the budget for the fiscal year in which the increase is proposed to take effect. On the same day that the Secretary submits the report to the committees, the Secretary shall submit a copy of the report to the Director of the Congressional Budget Office.

(4) Not later than 30 days after the Secretary submits the report to the committees, the Director of the Congressional Budget Office shall transmit to the committees the Director's views on the Secretary's report.

(e)(1) Subject to paragraphs (2), (3), and (4) of this subsection,the Secretary may reduce each fee percentage increased under paragraph (1) of this subsection if the Secretary determines, on the basis of economic projections and analyses, that the Home Loan Guaranty Fund will, despite such reduction, be able to pay the valid claims of holders of defaulted loans during the first 24 months that the reduced fee percentage is to be in effect.

(2) In exercising the authority under paragraph (1) of this subsection, the Secretary shall reduce all such fee percentages by multiplying each such fee percentage by the same factor.

(3) The percentage for a particular fee may not be reduced below the percentage specified for that fee in subsection (a)(2) of this section.

(4) At least 30 days before reducing fee percentages under this subsection, the Secretary shall provide the Committees on Veterans' Affairs of the Senate and House of Representatives with notice of the proposed reduction, a copy of the Secretary's determination under paragraph (1) of this subsection, and the economic projections and analyses on which the Secretary bases such determination.

* * * * * * *

§ 1832. Procedure on default

(a)(1) In the event of default in the payment of any loan guaranteed under this chapter, the holder of the obligation shall notify the Administrator of such default. Upon recepit of such notice, the Administrator may, subject to subsection (c) of this section, pay to such holder the guaranty not in excess of the pro rata portion of the amount originally guaranteed. **[**If**]** *Except as provided in section 1803(e) of this title, if* the Administrator makes such a payment, the Administrator shall be subrogated to the rights of the holder of the obligation to the extent of the amount paid on the guaranty.

* * * * * * *

(5) When a default has occurred in the payment of any loan made, guaranteed, or insured under this chapter and the holder of the ob-

ligation has refused a tender of a payment of a significant portion of an amount payable under the terms of the loan, the Secretary may require the holder of the obligation to notify the Secretary as soon as such tendered payment has been refused. The Secretary may require that any such notification include a statement of the circumstances of the default, the amount tendered, the amount of the indebtedness on the date of the tender, and the reasons for the holder's refusal, and such other information as the Secretary determines is necessary to service defaulted loans.

* * * * * * *

(c)(1) For purposes of this subsection—

(A) * * *

* * * * * * *

(C) The term "net value", with respect to real property, means the amount equal to [(i)] the fair market value of the property, minus [(ii)] *(i)* the total of the amounts which the Administrator estimates the Administrator would incur (if the Administrator were to acquire and dispose of the property) for property taxes, assessments, liens, property maintenance, property improvement, administration, resale, and other costs resulting from the acquisition and disposition of the [property.] *property (other than the cost of borrowing funds to acquire the property), and minus (ii) 50 percent of the cost to the Government of borrowing the amount equal to the excess, if any, of the total indebtedness over the amount guaranteed under this chapter.*

* * * * * * *

(11) This subsection shall cease to have effect on October 1, [1989.] *1991.*

§ 1833. Property management

(a)(1) * * *

* * * * * * *

(3)(A) Before October 1, [1989,] *1990,* notes evidencing such loans may be sold with or without recourse as determined by the Administrator, with respect to specific proposed sales of such notes, to be in the best interest of the effective functioning of the loan guaranty program under this chapter, taking into consideration the comparative cost-effectiveness of each type of sale. In comparing the cost-effectiveness of conducting a proposed sale of such notes with recourse or without recourse, the Administrator shall, based on available estimates regarding likely market conditions and other pertinent factors as of the time of the sale, determine and consider—

(i) the average amount by which the selling price for such notes sold with recourse would exceed the selling price for such notes if sold without recourse; and

(ii) the total cost of selling such notes with recourse, including—

(I) any estimated discount or premium;

(II) the projected cost, based on Veterans' Administration experience with the sale of notes evidencing vendee loans with recourse and the quality of the loans evidenced by the notes to be sold, of repurchasing defaulted notes;

(III) the total servicing cost with respect to repurchased notes, including the costs of taxes and insurance, collecting monthly payments, servicing delinquent accounts, and terminating insoluble loans;

(IV) the costs of managing and disposing of properties acquired as the result of defaults on such notes;

(V) the loss or gain on resale of such properties; and

(VI) any other cost determined appropriate by the Administrator.

(B) Not later than 60 days after making any sale described in subparagraph (A) of this paragraph occurring before October 1, [1989,] *1990,* the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report describing—

(i) the application of the provisions of such subparagraph, and each of the determinations required thereunder, in the case of such sale;

(ii) the results of the sale in comparison to the anticipated results; and

(iii) actions taken by the Administrator to facilitate the marketing of the notes involved.

(C) Beginning on October 1, [1989,] *1990,* the Administrator may sell any note evidencing such a loan—

(i) with recourse; or

(ii) without recourse but only if the amount received is equal to an amount which is not less than the unpaid balance of such loan.

(D) Notwithstanding the Balanced Budget and Emergency Deficit Control Act of 1985 and the Congressional Budget and Impoundment Control Act of 1974, all amounts received from the sale of such loans shall be credited without any reduction, for the fiscal year in which the amount is received, as offsetting collections of the Loan Guaranty Revolving Fund (established by section 1824 of this title) or the Home Loan Guaranty Fund (established by section 1824A of this title), for which a fee was collected (or from which a fee was exempted from being collected) at the time the loan was originally guaranteed. The total amount credited to the Loan Guaranty Revolving Fund or the Home Loan Guaranty Fund for a fiscal year shall offset outlays attributed to such Fund, as the case may be, during such fiscal year.

* * * * * * *

§ 1834. Annual Submission of Information on the Loan Guaranty Revolving Fund and the Home Loan Guaranty Fund

(a) In the documents providing detailed information of the budget for the Department of Veterans Affairs that the Secretary of Veterans Affairs submits to the Congress in conjunction with the President's budget submission for each fiscal year pursuant to section 1105 of title 31, United States Code, the Secretary shall include—

(1) a thorough description of the operations of the Loan Guaranty Revolving Fund and the Home Loan Guaranty Fund during the fiscal year preceding the fiscal year in which such budget is submitted; and

(2) the needs of such funds, if any, for appropriations in—

(A) the fiscal year in which the budget is submitted; and

(B) the fiscal year for which the budget is submitted.

(b) The matters submitted under subsection (a) of this section shall include, with respect to each fund refered to in subjection (a), the following:

(1) Information and financial data on the operations of the fund during the fiscal year before the fiscal year in which such matters are submitted and estimated financial data and related information on the operation of the fund for—

(A) the fiscal year of the submission; and

(B) the fiscal year following the fiscal year of the submission.

(2) Estimates of the amount of revenues derived by the fund in the fiscal year preceding the fiscal year of the submission, the amount of revenues in the fiscal year of the submission, and in the fiscal year following the fiscal year of the submission from each of the following sources:

(A) Fees collected under sections 1803(a)(3)(A) and 1829 of this title for each category of loan guaranteed, insured, or made under this chapter.

(B) Federal Government contributions made under section 1824A(c)(2)(A) of this title.

(C) Federal Government payments under section 1829(c) of this title.

(D) Investment income.

(E) Sales of foreclosed properties.

(F) Loan asset sales.

(G) Each additional source of revenue.

(3) Information, for each fiscal year referred to in paragraph (2) of this subsection regarding the types of dispositions made of defaults on loans guaranteed, insured, or made under this chapter, including the cost to the fund, and the numbers, of such types of dispositions.

* * * * * * *

CHAPTER 42—EMPLOYMENT AND TRAINING OF DISABLED AND VIETNAM ERA VETERANS

* * * * * * *

§ 2014. Employment within the Federal Government

(a)(1) It is the policy of the United States and the purpose of this section to promote the maximum of employment and job advacement opportunities within the Federal Government for [qualified disabled veterans and veterans of the Vietnam era.] *certain disabled Vietnam, and post-Vietnam-era veterans who are qualified for such employment and advancement.*

* * * * * * *

(b)(1) To further the policy stated in subsection (a) of this section, veterans [of the Vietnam era] *referred to in paragraph (2)* shall be eligible, in accordance with regulations which the Office of Personnel Management shall prescribe, for veterans readjustment appointments, and for subsequent career-conditional appointments, under the terms and conditions specified in Executive Order Numbered 11521 (March 26, 1970), except that—

(A) such an appointment may be made up to and including the level GS-9 or its equivalent;

[(B) a veteran of the Vietnam era shall be eligible for such an appointment without any time limitation with respect to eligibility for such an appointment;]

(B) a veteran referred to in paragraph (2) shall be eligible for a readjustment appointment during the four-year period beginning on the date of the veteran's latest discharge or other separation from active duty;

(C) a veteran of the Vietnam era *referred to in paragraph (2)* who is entitled to disability compensation under the laws administered by the Veterans' Administration or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty shall be eligible for such an appointment without regard to the number of years of education completed by such veteran; [and]

(D) a veteran given an appointment under the authority of this subsection whose employment under the appointment is terminated within one year after the date of such appointment shall have the same right to appeal that termination to the Merit Systems Protection Board as a career or career-conditional employee has during the first year of [employment.] *employment; and*

(E) a veteran may not receive, after the date of the enactment of this clause, more than one readjustment appointment pursuant to this subsection.

(2) This subsection applies to—

(A) a veteran of the Vietnam era who—

(i) is a disabled veteran; or

(ii) during such era, served on active duty in the Vietnam theater of operations, as defined by the Secretary;

(B) a veteran who has a service-connected disability rated at 30 percent or more; and

(C) a veteran who served on active duty after the Vietnam era.

[(2)]*(3)* No veterans readjustment appointment may be made under authority of this subsection after December 31, [1989.] *1991.*

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

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SUBCHAPTER II—EFFECTIVE DATES

* * * * * * *

§ 3013. Effective dates of educational benefits

[Effective] *(a) Except as provided in subsection (b) of this section, effective* dates relating to awards under chapters 30, 31, 32, 34, and 35 of this title shall, to the extent feasible, correspond to effective dates relating to awards of disability compensation.

(b) The effective date of an adjustment of benefits under any chapter referred to in subsection (a) of this section, if made on the basis of a change in a student's rate of pursuit of training for which proof is required by the Secretary under section 1780(g) of this title, or if made on the basis of any other change in a student's training time for which proof is required by the Secretary under such section, shall be the date of the change.

* * * * * * *

CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec.
3101. Nonassignability and exempt status of benefits.
3102. Waiver of recovery of claims by the United States.
3103. Certain bars to benefits.
3103A. Minimum active-duty service requirement.
3104. Prohibition against duplication of benefits.
3105. Waiver of retired pay.
3106. Renouncement of right to benefits.
3107. Apportionment of benefits.
3108. Withholding benefits of persons in territory of the enemy.
3109. Payment of certain withheld benefits.
3110. Payment of benefits for month of death.
3111. Prohibition of certain benefit payments.
3112. Annual adjustment of certain benefit rates.
3113. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony.
3114. Indebtedness offsets.
3115. Interest and administrative cost charges on delinquent payments of certain amounts due the United States
3116. Authority to sue to collect certain debts.
3117. Protection of benefit applicants and recipients from improper use of certain information.

* * * * * * *

§ 3102. Waiver of recovery of claims by the United States

(a) There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Veterans' Administration whenever the Admiistrator determines that recovery would be against equity and good conscience, if an application for relief is made within 180 days from the date of notification of the indebtedness by the Administrator to the payee, or within such longer period as the Administrator determines is reasonable in a case in which the payee demonstrates to the satisfaction of the Administrator that such notification was not actually received by such payee within a reasonable period after such date. *The Secretary shall include in the notification a statement of the debtor's right to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.*

(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Administrator may waive payment of an indebtedness to the Veterans' Administration by the veteran (as defined in sections [101 and 1801),] *101, 1801, and 1802(a)(2)(C)(ii) of this title),* or the veteran's spouse, following default and loss of the property, where the Administrator determines that collection of such indebtedness would be against equity and good conscience. *An application for relief under this subsection must be made within one year after the date on which the Secretary notifies the debtor of the indebtedness. The Secretary shall include in the notification a statement of the debtor's right to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.*

§ 3117. Protection of benefit applicants and recipients from improper use of certain information

(a)(1) In order to protect applicants for and recipients of the benefits and services described in paragraph (2) of this subsection from the improper use of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(D)(viii)), the Secretary may not terminate, deny, suspend, or reduce any such benefits or services of an individual until the Secretary has complied with the requirements in section 1137(c) of the Social Security Act (42 U.S.C. 1320b–7c)), and such requirements shall be fully applicable in the case of such benefits and services.

(2) The benefits and services described in this paragraph are—

(A) needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Department of Veterans Affairs;

(B) parents' dependency and indemnity compensation provided under section 415 of this title;

(C) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of this title; and

(D) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total.

(b) In the case of compensation described in subsection (a)(2)(D) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment data referred to in subsection (a) of this section only if the Secretary finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

* * * * * * *

§ 3203. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1)(A) Where any veteran having neither spouse nor child is being furnished domiciliary care by the Veterans' Administration, no pension in excess of **[**$60**]** *$105* per month shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care.

(B) Except as provided in **[**subparagraph**]** *subparagraph* (D) and *(E)* of this paragraph, where any veteran having neither spouse nor child is being furnished hospital or nursing home care by the **[**Veterans' Administration,**]** *Department of Veterans Affairs,* no pension in excess of **[**$60**]** *$105* per month shall be paid to or for the veteran for any period **[**after the end of the third full calendar month following the month of admission for such care.**]** *after—*

(i) in the case of a veteran being furnished hospital care, the end of the eighth calendar month following the month of admission for such care; and

(ii) in the case of a veteran being furnished nursing home care, the end of the third calendar month following the month of admission for such care.

(C) No pension in excess of **[**$60**]** *$105* per month shall be paid to or for a veteran having neither spouse nor child for any period after the month in which such veteran is readmitted for care described in subparagraph (A) or (B) of this paragraph and furnished by the Veterans' Administration if such veteran is readmitted within six months of a period of care in connection with which pension was reduced pursuant to subparagraph (A) or (B) of this paragraph.

(D) In the case of a veteran being furnished hospital or nursing home care by the Veterans' Administration and with respect to whom subparagraph (B) of this paragraph requires a reduction in pension, such reduction shall not be made for a period of up to three additional calendar months after the last day of the **[**third month referred to in**]** *period for which the veteran's pension is not reduced under* such subparagraph if the Administrator determines that the primary purpose for the furnishing of such care during such additional period is for the Veterans' Administration to provide such veteran with a prescribed program of rehabilitation services, under chapter 17 of this title, designed to restore such veteran's ability to function within such veteran's family and community. If the Administrator determines that it is necessary, after such period, for the veteran to continue such program of rehabilitation services in order to achieve the purposes of such program and that the primary purpose of furnishing hospital or nursing home care to the veteran continues to be the provision of such program to the veteran, the reduction in pension required by subparagraph (B) of this paragraph shall not be made for the number of calendar months that the Administrator determines is necessary for the veteran to achieve the purposes of such program.

(E) The Secretary may extend the period during which the pension of a veteran referred to in subparagraph (B)(i) of this paragraph is not reduced under such subparagraph if the Secretary determines that the veteran is likely to be discharged from the hospital within

the period for which the extension is granted or within a reasonably short period after the expiration of such extended period. No extension may be granted under this subparagraph for a period exceeding two months. Successive extensions may be granted, but the total period of all extensions granted a veteran under this subparagraph in connection with one hospitalization may not exceed four months.

* * * * * * *

(b)(1)(A) In any case in which a veteran having neither spouse nor child is being furnished hospital treatment or institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, is rated by the Veterans' Administration in accordance with regulations as being incompetent, and the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home), from any source equals or exceeds [$1,500,] *$6,000,* further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to [$500.] *$2,000.*

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PART V—BOARDS AND DEPARTMENTS

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CHAPTER 71—BOARD OF VETERANS' APPEALS

Sec.
4001. Composition of Board of Veterans' Appeals.
4002. Assignment of members of Board.
4003. Determinations by the Board.
4004. Jurisdiction of the Board.
4005. Filing of notice of disagreement and appeal.
4005A. Simultaneously contested claims.
4006. Administrative appeals.
4007. Docketing of appeals.
4008. Rejection of applications.
4009. Independent medical opinions.
4010. Traveling sections.
4011. Notice of procedural rights and other information.

* * * * * * *

§ 4011. Notice of procedural rights and other information

(a) In the case of a claim for benefits under laws administered by the Department of Veterans Affairs, the Secretary, as to proceedings other than proceedings before the Board, or the Chairman of the Board, as to proceedings before the Board, shall, at each procedural stage relating to the disposition of such a claim, beginning with the decision after an initial review of determination, and including the furnishing of a statement of the case and the making of a final decision by the Board, provide to the claimant and such claimant's authorized representative, if any, written notice of the procedural rights of the claimant and the rationale for the decision, including a summary of the evidence (or lack or evidence) supporting the decision.

(b) The notice required by subsection (a) of this section shall be on such forms as the Secretary or the Chairman, respectively, shall prescribe and shall include, in easily understandable language, with respect to proceedings before the Department of Veterans Affairs the following:

(1) Descriptions of all subsequent procedural stages provided for by statute, regulation, or Department of Veterans Affairs policy.

(2) Descriptions of all rights of the claimant expressly provided for in or pursuant to this chapter, of the claimant's rights to a hearing, to reconsideration, to appeal, and to representation, and of any specific procedures necessary to obtain the various forms of review available for consideration of the claim.

(3) In the case of an appeal to the Board, the opportunity for a hearing before a traveling section of the Board.

(4) Such other information as the Secretary or the Chairman of the Board, respectively, as a matter of discretion, determines would be useful and practical to assist the claimant in obtaining full consideration of the claim.

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CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

SUBCHAPTER I—ORGANIZATION; GENERAL

Sec.
4101. Functions of Department.
4102. Divisions of Department.
4103. Office of the Chief Medical Director.
4104. Additional appointments.
4105. Qualifications of appointees.
4106. Period of appointments; promotions.
4107. Grades and pay scales.
4107A. Competitive pay rates for certain nurse and other health-care professional positions.
4108. Personnel administration.
4109. Retirement rights.
4110. Disciplinary boards.
4110A. Grievances and certain disciplinary reviews.
4111. Appointment of additional employees.
4112. Special Medical Advisory Group and other advisory bodies.
4113. Travel expenses of employees.
4114. Temporary full-time, part-time, and without compensation appointments; residencies and internships.
4115. Regulations.
4116. Defense of certain malpractice and negligence suits.
4117. Contracts for scarce medical specialist services.
4118. Special pay for physicians and dentists.
4119. Relationship between this subchapter and other provisions of law.
4120. Recruitment and retention bonus pay for nurses and certain other health-care personnel.
4120A. Performance awards and cash awards.
4120B. Dependent care assistance.

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SUBCHAPTER I—ORGANIZATION; GENERAL

§ 4101. Functions of Department

(a) * * *

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(g)(1) The purposes of this subsection are (A) to improve and expand the capability of Department of Veterans Affairs health-care facilities to respond with the most effective and appropriate services possible to the needs of veterans suffering from mental illness, especially from service-related conditions, and (B) to advance scientific knowledge regarding mental illness, especially service-related conditions, and regarding such needs and the methods of meeting them by facilitating higher quality care for eligible veterans suffering from mental illness, especially from service-related conditions, through research, the education and training of health personnel in the provision of health care to such veterans, and the development of improved models of clinical services for eligible veterans suffering from mental illness.

(2)(A) In order to carry out the purposes of this subsection, the Secretary, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five health-care facilities of the Department of Veterans Affairs (at least one of which shall be designated before July 1, 1990) as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

(B) In designating facilities as the locations for centers under subparagraph (A) of this paragraph, the Secretary, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

(C) The Secretary may not designate any health-care facility as a location for a center under subparagraph (A) of this paragraph unless the Secretary, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

(i) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an arrangement under which residents receive education and training in psychiatry through regular rotation through such center so as to provide such residents with training in the diagnosis and treatment of mental illness;

(ii) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such center so as to provide such students with training in the diagnosis and treatment of mental illness;

(iii) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

(iv) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

(v) a policymaking advisory committee composed of appropriate mental health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

(vi) the capability to conduct effectively evaluations of the activities of such center.

(3) There are authorized to be appropriated for the basic support of the research and education and training activities of the centers established pursuant to paragraph (1) of this subsection $3,125,000 for fiscal year 1990 and $6,250,000 for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Department of Veterans Affairs medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

(4) Activities of clinical and scientific investigation at each center shall be eligible to compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

(5) The Chief Medical Director shall ensure that research activities carried out through such centers include an appropriate emphasis on the psychosocial dimension of mental illness and on models for furnishing care and treatment to veterans suffering from mental illness.

(6) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical activities of such centers is disseminated throughout the Veterans' Health Services and Research Administration through the development of programs of continuing medical and related education provided through regional medical education centers under subchapter II of chapter 73 of this title and other means.

(7) The official within the Central Office of the Veterans' Health Services and Research Administration responsible for mental health and behavioral science matters shall be responsible for the supervision of the operation of the centers established pursuant to paragraph (1) of this subsection.

* * * * * * *

§ 4106. Period of appointments; promotions

(a) * * *

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(h)(1) Notwithstanding subchapter I of chapter 33 of title 5, the Secretary, upon the recommendation of the Chief Medical Director,

may appoint in the competitive service under such title any individual who—

(A) has been awarded a degree or certificate in a health-care profession or occupation by an accredited institution;

(B) has been appointed by the Secretary to participate in a clinical education program conducted by an educational institution affiliated with the Department health-care facility; and

(C) within one year before that individual's appointment in the competitive service, has successfully completed such clinical education program.

(2) In making appointments to the competitive service under this subsection, the Secretary shall apply the principles of preference for the hiring of veterans and other persons established in subchapter I of chapter 33 of title 5.

§ 4107. Grades and pay scales

(a) * * *

* * * * * * *

(b)(1) The grades and annual ranges of rates of basic pay for positions provided for in paragraph (1) of section 4104 of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as other authorized by law:

PHYSICIAN AND DENTIST SCHEDULE

Director grade.
Executive grade.
Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

NURSE SCHEDULE

[Director grade.
[Assistant Director grade.
[Chief grade.
[Senior grade.
[Intermediate grade.
[Full grade.
[Associate grade.
[Junior grade.]
Three or more grades, as prescribed by the Chief Medical Director pursuant to paragraph (3) of this subsection.

CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE

Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

(2) No person may hold the director grade in the "Physician and Dentist Schedule" unless such person is serving as a director of a

hospital, domiciliary, center, or outpatient clinic [(independent).] *(independent) or is a physician or dentist serving in a comparable position in the central office of the Veterans Health Services and Research Administration.* No person may hold the executive grade unless such person holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position.

(3) The Chief Medical Director shall prescribe the number of grades and the number of steps within grades for nurse positions.

* * * * * * *

(e)(1) In addition to the rate of basic pay provided for [nurses in subsection (b)(1) of this section] *nurses,* a nurse shall receive additional pay as provided by paragraphs (2) through (8) *and paragraph (11)* of this subsection.

* * * * * * *

(5) A nurse [performing] *who performs* officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional [service; the] *service. The rate of* overtime [rates] *pay for such nurse* shall be one and one-half times such nurse's hourly rate of basic [pay, not to exceed one and one-half times the hourly rate of basic pay for the minimum rate of Intermediate grade of the Nurse Schedule.] *pay.* For the purposes of this paragraph, overtime must be of at least fifteen minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted, except as voluntarily requested in writing by the nurse in question. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration. For the purposes of this paragraph, the period of a nurse's officially ordered or approved tavel away from such nurse's duty station may not be considered to be hours of service unless—

(A) such travel occurs during such nurse's tour of duty; or

(B) such travel (i) involves the performance of services while traveling, (ii) is incident to travel that involves the performance of services while traveling, (iii) is carried out under arduous conditions as determined by the Administrator, or (iv) results from an event which could not be scheduled or controlled administratively.

(6) For the purpose of computing the additional pay provided by paragraph (2), (3), (4), [or (5)] *(5), or (11)* of this subsection, a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by two thousand and eighty.

(7) When a nurse is entitled to two or more forms of additional pay under paragraph (2), (3), (4), [or (5)] *(5), or (11)* for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in paragraph (5) shall be payable for overtime service performed on a holiday designated

by Federal statute or Executive order in addition to pay received under paragraph (4) for such service.

* * * * * * *

(9) Any additional pay paid pursuant to this [subsection] *subsection, other than pay under paragraph (11) of this subsection,* shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, *84,* or 87 of title 5, or other benefits based on basic pay.

* * * * * * *

(11) A nurse shall be paid additional pay equal to 6 percent of the nurse's hourly rate of basic pay for each hour of service performed as a head nurse. The preceding sentence shall not apply to a nurse who is assigned to perform service as a head nurse for a period of less than 30 consecutive days.

(f) Physician assistants and expanded-function dental auxiliaries shall be compensated by use of Nurse Schedule grade titles and related pay ranges and shall be entitled to additional pay on the same basis as provided for nurses in subsection (e) of this section. Notwithstanding any other provision of law, when the Administrator determines it to be necessary in order to obtain or retain the services of certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, [or] occupational therapists, *or any other health-care personnel furnishing direct care to patients or providing services incident to the furnishing of direct care to patients,* the Administrator may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in subsection (e) of this section. The Administrator shall prescribe by regulation standards for compensation and payment under this subsection.

(g)(1) * * *

* * * * * * *

(3)*(A)* The amount of any increase under paragraph (1) of this subsection in the maximum rate for any grade may not (except in the case of nurse anesthetists and licensed physical therapists) exceed *by two times* the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Chief Medical Director.

(B) Whenever the amount of an increase under paragraph (1) of this subsection results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under subparagraph (A) of this paragraph, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.

(4) In the exercise of the authority provided in paragraph (1) of this subsection with respect to personnel described in clause (B) or (C) of such paragraph to increase the rates of basic pay for any category of personnel not appointed under this subchapter, the Ad-

ministrator shall, not less than [ninety] *45* days prior to the effective date of a proposed increase, notify the President of the Administrator's intention to provide such an increase. If, prior to such effective date, the President disapproves such increase and provides the appropriate committees of the Congress with a written statement of the President's reasons for such disapproval, such proposed increase shall not take effect. *If, prior to such effective date, the President approves such increase, the Secretary may advance the effective date to any date not earlier than the date of the President's approval.*

* * * * * * *

(i) The Administrator may authorize an exception to the restrictions in subsections (a), (b), and (c) of section 5532 of title 5 if necessary to meet special or emergency employment needs [which result from a severe shortage of well-qualified candidates in physician positions which otherwise cannot be readily met.] *which—*

(1) result from a severe shortage of well-qualified candidates in (A) physician positions, (B) positions of health-care professionals involved in providing direct patient care, or (C) positions of personnel involved in providing services incident to direct patient care; and

(2) cannot otherwise be readily met.

* * * * * * *

(k)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall pay each nurse who is recertified in the speciality in which the nurse is employed a lump-sum payment equal to 1 percent of the annual salary of the nurse (as of the time the nurse is recertified). The Secretary shall make such payment when the nurse is recertified.

(2) A payment may not be paid to a recertified nurse under this subsection if the performance rating for such nurse for the latest rating period ending before the date of the recertification is less than satisfactory.

(3) A special payment under this subsection shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this title.

§ 4107A. Competitive pay rates for certain nurse and other health-care professional positions

(a)(1) It is the purpose of this section to ensure, by a means providing maximum flexibility to directors of Department of Veterans Affairs health-care facilities, that the rates of basic pay for health-care professional positions described in paragraphs (2) of this subsection in each such facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for such health-care facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-care facilities in the recruitment and retention of qualified personnel for such positions.

(2) The health-care professional positions referred to in paragraph (1) of this subsection are registered nurse positions, registered nurse anesthetist positions, certified registered nurse anesthetist positions,

and the positions for such other health-care professionals referred to in clauses (1) and (3) of section 4104 of this title as the Secretary may determine upon the recommendation of the Chief Medical Director.

(b) The Secretary shall ensure that, for pay periods beginning on or after July 1, 1990, the rates of basic pay for covered positions in the Department are established in accordance with this section instead of section 4107(b)(1) of this title.

(c)(1) Not later than June 1, 1990, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

(A) conduct a survey in accordance with this subsection; and

(B) on the basis of such survey, establish the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out the purpose of this section.

(2) The rates of basic pay established pursuant to paragraph (1) of this subsection shall become effective beginning with the first pay period that begins on or after July 1, 1990.

(3) Not later than December 1 of each year after 1989, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

(A) conduct a survey in accordance with this subsection; and

(B) on the basis of such survey—

(i) determine whether it is necessary to adjust the rates of basic pay for such covered positions at such facility in order to carry out the purpose of this section; and

(ii) effective with the first pay period that begins on or after January 1 of the next year, adjust the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out such purpose.

(4)(A) In the case of the covered positions in each category of covered positions in a Department health-care facility, the director of that facility shall survey the entry-level compensation established for the corresponding health-care professional positions in comparable non-Department health-care facilities within the same labor market area as that Department health-care facility. The Secretary shall specify in regulations the criteria for determining the number of comparable non-Department health-care facilities to be included in the survey.

(B) If the number of non-Department health-care facilites comparable to a Department health-care facility in the same labor market area is less than the number determined in accordance with the criteria specified pursuant to subparagraph (A) of this paragraph or is less than the director of that Department health-care facility considers necessary in order to produce a valid comparison, such director shall, in the case of the covered positions referred to in such subparagraph, survey—

(i) the entry-level compensation established for the corresponding health-care professional positions in such comparable non-Department health-care facilities as are located within that labor market area; and

(ii) the entry-level compensation established for the corresponding health-care professional positions in other non-Department health-care facilities within that labor market area.

(C) For the purposes of this paragraph, a non-Department health-care facility is comparable to a Department health-care facility if the director of the Department health-care facility determines, in accordance with regulations prescribed by the Secretary, that the non-Department health care facility (i) is in direct competition with the Department health-care facility for the recruitment and retention of personnel qualified for employment in covered positions, and (ii) has other characteristics that are comparable to the characteristics of a Department health-care facility.

(5)(A) Except as provided in subparagraph (B) of this paragraph, the director of a Department health-care facility shall ensure that an appropriate cost-of-living adjustment is provided for in adjustments of rates of pay that are made for years following 1990 pursuant to a survey under this subsection.

(B) The director of a Department health-care facility may waive, in whole or in part, with respect to any rate of basic pay for a covered position the cost-of-living component of any adjustment for any year in which the cost-of-living adjustment is not necessary, in whole or in part (as the case may be), in order for that rate of pay to be competitive.

(d)(1) If the director of a Department health-care facility determines in any year that, because of an insufficiency in the number of non-Department health-care facilities or non-Department covered positions, a survey under subsection (c) of this section would not provide a valid comparison with respect to the covered positions in the director's facility, the director shall establish or adjust the rates of basic pay for the covered positions in the director's facility as provided in this subsection instead of subsection (c) of this section.

(2) Not later than 90 days before the date on which the director of a Department health-care facility establishes or adjusts rates of basic pay pursuant to paragraph (1) of this subsection, the director shall—

(A) identify a labor market area that is similar to the labor market area of such facility and includes a Department health-care facility; and

(B) notify the Chief Medical Director of the labor market identified pursuant to clause (A) of this paragraph.

(3) The director of a health-care facility referred to in paragraph (1) of this subsection shall prescribe the same rates of basic pay for the covered positions in the director's facility as are prescribed for the same covered positions in the Department health-care facility located in the identified labor market area unless the selection of that labor market area for the purpose of this subsection is disapproved by the Chief Medical Director in accordance with paragraph (5) of this subsection.

(4) If the Chief Medical Director disapproves (in accordance with paragraph (5) of this subsection) the selection of a labor market area by the director of a health-care facility for the purpose of this subsection, the director of that facility shall prescribe the same rates of basic pay for the covered positions in that facility as are prescribed for the Department health-care facility in a labor market area

which the Chief Medical Director determines to be similar to the labor market area of the director's health-care facility.

(5) Not later than 60 days after receiving a notification from the director of a Department health-care facility under paragraph (2)(B) of this subsection, the Chief Medical Director shall—

(A) approve the selection of the labor market area identified in the notification; or

(B) disapprove the selection of that labor market area, designate another labor market area determined by the Chief Medical Director to be similar to the labor market area of the director's health-care facility, and notify that facility director of that designation.

(6) In order for a labor market area to be determined similar to the labor market area of a Department health-care facility for the purposes of this subsection, both labor market areas must be similar in size, demographic characteristics, and labor market characteristics.

(e)(1) When the director of a Department health-care facility establishes or adjusts the rates of basic pay for a grade for any category of positions at such facility in order to carry out the purpose of this section, the director shall specify the minimum rate of basic pay for such grade and, subject to paragraph (3) of this subsection, increase or reduce the other rates of basic pay for such grade to amounts that bear the same relationship to the specified minimum rate of basic pay and to each other as the rates of basic pay within such grade bear to each other before the increase or reduction, as the case may be.

(2) The minimum rate of basic pay prescribed for a grade for the positions in any category of covered positions in a Department health-care facility on the basis of a survey conducted under subsection (c) of this section shall be sufficient for the pay and other employee benefits of the health-care professionals employed in such positions in such grade to be competitive with the entry-level compensation (but may not exceed the highest rate of entry-level pay established) for the corresponding health-care professionals positions in non-Department health-care facilities in the same labor market area, as ascertained by the director of such facility in such survey.

(3)(A) Except as provided in subparagraph (C) of this paragraph, the maximum rate of basic pay for any grade designated by the Secretary, upon the recommendation of the Chief Medical Director, as the entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay establishes for grade 13 of the General Schedule under section 5332 of title 5.

(B) The maximum rate of basic pay for any grade other than an entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for a position in level V of the Executive Schedule under section 5316 of title 5.

(C) The limitation prescribed by subparagraph (A) of this paragraph shall not apply to the entry-level grade for any category of covered positions if the positions have been designated by the Chief Medical Director as supervisory or managerial positions. The maximum rate prescribed by subparagraph (B) of this paragraph shall apply to such entry-level grade.

(4) Whenever a grade is added to the schedule of grades for covered positions in any category of covered positions or a step within grade is added to a grade in such schedule, the director of a Department health-care facility shall establish the rates of basic pay for that grade or the rate of pay for that step, as the case may be, in the same manner as the rates of pay are established and adjusted under the other provisions of this subsection. The rates of basic pay for the additional grade shall bear the same relationship to the minimum rate of basic pay specified for such grade and to each other as the rates of basic pay within each other grade in such schedule bear to each other. The rate of pay for an additional step within grade shall bear the same relationship to the other rates of basic pay within such grade as such other rates bear to each other.

(f) An employee who is paid a rate of basic pay established under this section and who is transferred (voluntarily or otherwise) from a covered position in another Department health-care facility shall be paid the rate of basic pay in effect for the covered position at the health-care facility to which the employee is transferred for the same grade and the same step within that grade as was applicable to that employee immediately before the transfer, if the Chief Medical Director determines that the duties of the position to which the employee is trasferred are at least comparable to the duties of the position from which the employee was transferred.

(g)(1) Rates of basic pay may be increased or reduced under this section.

(2) A reduced rate of basic pay established for a covered position under this subsection shall not apply to an employee serving in such position at a Department health-care facility on the day before the effective date of the reduced rate. That employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to that employee on such day for as long as the employee continues to serve in such position at such facility.

(h)(1) In developing the criteria for the conduct of surveys under subsection (c) for application by all Department health-care facilities, the Secretary shall consult with representatives of each labor organization accorded exclusive recognition under chapter 71 of title 5 for a unit that includes employees whose rates of pay are to be established on the basis of such surveys.

(2) In the case of employees in covered positions in a unit in a particular Department health-care facility with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, the director of the health-care facility shall consult with the representatives of such labor organization on—

(A) the criteria developed by the director of that health-care facility for the conduct of surveys under subsection (c);

(B) the director's plans for the collection of data in conducting surveys; and

(C) the determinations regarding specific rates of basic pay.

(i) The establishment and adjustment of rates of basic pay under this section for covered positions does not limit the authority of the Secretary to pay bonuses under section 4120 of this title to employees appointed to such positions.

(j)(1) Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and

House of Representatives a report regarding the exercise of the authority provided in this section for the immediately preceding calendar year.

(2) The report shall contain an assessment of the effects of the exercise of such authority on the ability of the Department to recruit and retain qualified health-care professionals for covered positions. The Secretary shall include in the report recommendations for such additional legislation to facilitate the recruitment and retention of qualified health-care professionals for such positions as the Secretary considers necessary or appropriate.

(3) If the authority provided in this section was exercised for the year covered by the report only to adjust the rates of basic pay for nurse positions, the report shall also contain the reasons that rates of basic pay were not adjusted for other health-care professionals positions under such authority for such year and any plans for adjusting the rates of basic pay for other health-care professional positions under such authority.

(k)(1) The Secretary, upon the recommendation of the Chief Medical Director, shall prescribe regulations setting forth criteria and procedures to carry out this section. Such regulations shall provide maximum flexibility for the director of each Department health-care facility. Documentation requirements in such regulations shall be minimal.

(2) If the Secretary fails to prescribe final regulations under this subsection before April 1, 1990, the Secretary shall, not later than such date, prescribe interim final regulations for the purposes of this subsection. Such regulations shall be effective upon issuance and shall remain in effect until the effective date of final regulations issued for the purposes of this subsection.

(3) If neither final regulations nor interim final regulations are prescribed under this subsection before April 1, 1990, the director of each Department health-care facility shall, nevertheless, make determinations and establish and adjust rates of basic pay under this section with respect to covered positions in such facility for 1990 and subsequent years. In the case of any determination or other action which is subject to criteria or procedures to be prescribed in such regulations, the director of each such facility shall apply such criteria and follow such procedures as the director considers appropriate and consistent with this section. Each such director shall apply the final regulations when issued.

(l) Information collected in surveys conducted under this section are not subject to disclosure under section 552 of title 5.

(m) For the purposes of this subsection:

(1) The term "covered position" means a position referred to in subsection (a)(1) of this section.

(2) The term "health-care facility" means a hospital or an independent outpatient clinic.

(3) The term "entry-level compensation", with respect to corresponding health-care professional positions in non-Department health-care facilities, means—

(A) the minimum rate of pay established for professionals in such positions who have education, training, and experience equivalent or similar to the education, training, and

experience required for health-care professionals employed in the same category of Department covered positions; and

(B) the other pecuniary employment benefits, if any, provided for the non-Department health-care professionals paid such minimum rate of pay.

(4) The term "corresponding", with respect to health-care professional positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care professional position in Department health-care facilities.

§ 4108. Personnel administration

(a) Notwithstanding any law, Executive order, or regulation, *except as provided in subsection (e) of this section,* the [Administrator] *Secretary* shall prescribe by regulation the hours and conditions of employment and leaves of absence of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries appointed to the [Department of Medicine and Surgery,] *Veterans Health Services and Research Administration,* except that the hours of employment in carrying out responsibilities under this title of any physician, dentist, podiatrist, optometrist (other than an inern or resident appointed pursuant to section 4114 of this title), nurse, physician assistant, or expanded-function dental auxiliary appointed on a full-time basis who accepts responsibilities for carrying out profesional services for remuneration other than those assigned under this title, shall consist of not less than eighty hours in a biweekly pay period (as that term is used in section 5504 of title 5), and no such person may—

(1) assume responsibility for the medical care of any patient other than a patient admitted for treatment at a [Veterans' Administration] *Department of Veterans Affairs* facility, except in those cases where the person, upon request and with the approval of the chief Medical Director, assumes such responsibilities to assist communities or medical practice groups to meet medical needs which would not otherwise be available for a period not to exceed one hundred and eighty calendar days, which may be extended by the Chief Medical Director for additional periods not to exceed one hundred and eighty calendar days each;

(2) teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title;

(3) accept payment under any insurance or assistance program established under subchapter XVIII, or XIX of chapter 7 of title 42, or under chapter 55 of title 10 for profesional services rendered by such person while carrying out such person's responsibilities under this title;

(4) accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5;

(5) request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title; and

(6) perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's benefit, or both, and in the case of any such fund or account established before September 1, 1973—

(A) the affiliated institution shall submit semiannually an accounting to the [Administrator] *Secretary* and to the Comptroller General of the United States with respect to such fund or account, and thereafter shall maintain such fund or account subject to full public disclosure and audit by the [Administrator] *Secretary* and the Comptroller General for a period of three years or for such longer period as the [Administrator] *Secretary* shall prescribe, and

(B) no physician, dentist, podiatrist, optometrist, nurse, physician assistant, or expanded-function dental auxiliary may receive, after September 1, 1973, any cash from amounts deposited in such fund or account derived from services performed prior to the effective date of this subsection.

(b) Any person serving as a Chief of Staff of a [Veterans' Administration] *Department of Veterans Affairs* health-care facility shall be appointed on a full-time basis.

(c) As used in this section:

(1) The term "affiliated institution" means any medical school or other institution of higher learning with which the [Administrator] *Secretary* has a contract or agreement as referred to in section 4112(b) of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any [non-Veterans' Administration] *non-Department of Veterans Affairs source in payment for carrying out any professional responsibilities.*

(d) Notwithstanding any other provision of law, *except as provided in subsection (e) of this section,* the [Administrator] *Secretary* may prescribe regulations establishing conditions under which officers and employees of the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* who are nationally recognized principal investigators in medical research may be permitted, in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the [Veterans' Administration,] *Department of Veterans*

Affairs, or in connection with acceptance of significant awards or with activity related thereto concerned with functions or activities of the [Veterans' Administration,] *Department of Veterans Affairs,* to accept payment in cash or in kind, from non-Federal agencies, organizations, and individuals, for travel and such reasonable subsistence expenses as are approved by the [Administrator] *Secretary* pursuant to such regulations, to be retained by such officers and employees to cover the cost of such expenses or deposited to the credit of the appropriation from which the cost of such expenses is paid, as may be provided in such regulations.

(e) The provisions of chapter 71 of title 5 shall apply to the exercise of the Secretary's authority under this section except with respect to—

(1) the prohibitions set out in paragraphs (1) through (6) of subsection (a) of this section; and

(2) the matters covered by section 4110 of this title.

(f)(1) The Secretary—

(A) shall, subject to paragraph (6) of this subsection, establish a voluntary leave transfer program for the benefit of health-care professionals referred to in the matter preceding clause (1) of subsection (a) of this section; and

(B) may establish a voluntary leave bank program for the benefit of such health-care professionals.

(2) To the maximum extent feasible—

(A) the voluntary transfer of leave program shall provide the same or similar requirements and conditions as are provided for the program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5; and

(B) any voluntary leave bank program established pursuant to paragraph (1)(B) of this subsection shall be consistent with the requirements and conditions provided for agency leave bank programs in subchapter IV of such chapter.

(3) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) of this subsection to participate in the leave transfer program established by the Director of the Office of Personnel Management under subchapter III of chapter 63 of title 5.

(4) The Secretary and the Director of the Office of Personnel Management may enter into an agreement that permits health-care professionals referred to in paragraph (1) of this subsection to participate in any voluntary leave bank program established for other employees of the Department pursuant to subchapter IV of chapter 63 of title 5.

(5) Participation of such health-care professionals in a voluntary leave transfer program or a voluntary leave bank program pursuant to an agreement entered into under paragraph (3) or (4) of this subsection shall be subject to such requirements and conditions as may be prescribed in such agreement.

(6) The Secretary is not required to establish a voluntary leave transfer program for any personnel permitted to participate in a vol-

untary transfer of leave program pursuant to an agreement referred to in paragraph (3) of this subsection.

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§ 4110. Disciplinary boards

[(a) The Chief Medical Director, under regulations prescribed by the Administrator shall from time to time appoint boards to be known as disciplinary boards, each such board to consist of not less than three nor more than five employees, senior in grade, of the Department of Medicine and Surgery, to determine, upon notice and fair hearing, charges of inaptitude, inefficiency, or misconduct of any person employed in a position provided in paragraph (1) of section 4104 of this title. The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges.]

(a)(1) The Chief Medical Director, under regulations prescribed by the Secretary, shall from time to time appoint disciplinary boards to determine, upon notice and fair hearing, the charges in any disciplinary action brought against a person employed in a position listed in paragraph (1) of section 4104 of this title (hereafter in this section referred to as the "respondent") on the basis of the performance or conduct of the respondent during employment with the Department of Veterans Affairs.

(2) A disciplinary board appointed in the case of any respondent shall consist of not less than three nor more than five employees of the Veterans Health Services and Research Administration who are senior in grade to the respondent. The majority of the members of such board shall be employed in the same category of position as the respondent.

(3) The Chief Medical Director may delegate the performance of the function of appointing a disciplinary board to an employee of the Veterans Health Services and Research Administration who is not involved in deciding whether to file charges to be determined by the board and who is not subordinate to any official involved in making such decision.

(b) The [Administrator] *Secretary* shall appoint the chairman and secetary of the board, each of whom shall have authority to administer oaths.

*   *   *   *   *   *   *

(d) A disciplinary board, when in its judgment charges are sustained, shall recommend to the [Administrator suitable disciplinary action, within limitations prescribed by the Administrator, which shall include reprimand, suspension without pay, reduction in grade, and discharge from the Department of Medicine and Surgery of such person.] *Secretary that the proposed disciplinary action be sustained or modified within limitations prescribed by the Secretary.* The [Administrator] *Secretary* shall either approve the recommendation of the board, approve such recommendation with modification or exception, approve such recommendation and suspend further action at the time, or disapprove such recommendation. The [Administrator] *Secretary* shall cause to be executed such action as the [Administrator] *Secretary* approves. The decision of the [Administrator] *Secretary* shall be final.

(e) The [Administrator,] *Secretary,* within such limitations as the [Administrator] *Secretary* may prescribe may delegate to the Chief Medical Director the authority vested in the [Administrator] *Secretary* by subsections (b) and (d) of this section to (1) appoint the chairman and secretary of a disciplinary board, such official to have the power prescribed by this section, and (2) receive and act upon the recommendations of such a board. Any person against whom disciplinary action is taken under authority delegated pursuant to this subsection shall have the right to appeal such action to the [Administrator,] *Secretary,* but in the absence of such an appeal the decision of the Chief Medical Director shall have the same force and effect as a decision of the [Administrator.] *Secretary.*

(f)(1) A disciplinary board is not required in the case of a disciplinary action if the proposed action is suspension for 14 days or less, reassignment without a reduction in basic pay, reduction in rank without a reduction in basic pay, reprimand, or admonishment.

(2) An employee against whom a disciplinary action described in paragraph (1) of this subsection is proposed to be taken shall be entitled to—

(A) an advance written notice stating the specific reasons for the proposed action;

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentatary evidence in support of the answer;

(C) representation by an attorney or other spokesperson; and

(D) a written decision and the specific reasons for the decision at the earliest practicable date.

(3) Disciplinary actions described in paragraph (1) of this subsection shall be subject to review under either the provisions of section 4110A of this title (in the case of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5) or an agency review procedure to be established by the Secretary (in the case of such employees who are not members of such a unit). Any such agency review procedure established by the Secretary shall include—

(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the Department of Veterans Affairs;

(C) a prompt report of the findings and recommendations by the impartial examiner; and

(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the Department on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.

§ 4110A. Grievances and certain disciplinary reviews

(a)(1) The Secretary shall authorize review of Department of Veterans Affairs actions on the following matters under procedures established by collective bargaining in accordance with the provisions of chapter 71 of title 5:

(A) Grievances of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5.

(B) Subject to paragraph (2) of this subsection, disciplinary actions described in subsection 4110(f)(1) of this title involving such employees.

(2) In the case of a review of a disciplinary action involving any question of clinical competence, as determined by either party, any person selected to serve as an arbitrator in such case under procedures established as provided in paragraph (1) of this subsection must be qualified as an arbitrator and must also be (A) qualified as a physician, dentist, or nurse, or (B) otherwise qualified, by specialized experience or training or both, in examining and adjudicating heatlh-care issues.

(b) For the purpose of resolving grievances of superviors and employees appointed under authority of this chapter who are not members of a unit determined appropriate under section 7112 of title 5, the Secretary shall authorize review of action of the Department on such grievances pursuant to a Department review procedure established by the Secretary under section 4110(f)(3) of this title.

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§ 4114. Temporary full-time, part-time, and without compensation appointments; residencies or internships

(a)(1) * * *

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(3)(A) Temporary full-time appointments of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries may exceed ninety days only if the Chief Medical Director finds that circumstances render it impracticable to obtain the necessary services through appointment under paragraph (1) of section 4104 of this title. Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of [nursing,] *nursing* approved by the [Administrator,] *Secretary or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized education or training institution approved by the Secretary* and *who* are pending registration [as a graduate nurse in a State,] *or licensure in a State, or certification by a national board recognized by the Secretary,* shall not exceed two years. Temporary full-time appointments of other personnel shall not exceed one year except as authorized in subparagraph (D) of this paragraph.

* * * * * * *

(C) A student [nurse] who has a temporary appointment under this paragraph and who is pursuing a full course of nursing in a recognized school of nursing approved by the [Administrator] *Secretary, or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized education or training institution approved by the Secretary* may be reappointed [for one year. Other personnel whose appointments are limited by this section to one year may not be reappointed under this subsection] *for a period not to exceed the duration of such student's academic program.*

* * * * * * *

§ 4120A. Performance awards and cash awards

(a)(1) The Secretary shall pay—

(A) performance awards under section 5406 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers; and

(B) cash awards under section 5407 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers in grades GS–13 through GS–15 of the General Schedule.

(2) The Secretary may pay performance awards under section 5406 of title 5 to Department employees described in section 4104 of this title who are not supervisors or managers.

(b) In the application of section 5406(c)(1) of title 5 to the payment of performance awards under subsection (a), the reference to employees covered by the performance management and recognition system shall be deemed to refer to the employees who are covered by paragraph (1)(A) of such subsection and the employees whom the Secretary elects to cover pursuant to paragraph (2) of such subsection.

(c) The Secretary shall prescribe in regulations the criteria for making performance awards under subsections (a)(1)(A) and (b) of this section.

(d) Determinations of which employees are supervisors or managers shall be made in accordance with the regulations prescribed to carry out this section, except that for purposes of this section head nurses shall be considered supervisors.

(e) A cash award under this section shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this section.

§ 4120B. Dependent care assistance

The Secretary shall establish and conduct a dependent care assistance program, which meets the requirements of section 129 of the Internal Revenue Code of 1986, for the care of dependents of employees in the Veterans Health Services and Research Administration.

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CHAPTER 76—HEALTH PROFESSIONALS EDUCATIONAL ASSISTANCE PROGRAM

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SUBCHAPTER II—SCHOLARSHIP PROGRAM

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§ 4312. Eligiblility; application; agreement

(a)(1) * * *

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(b)(1) * * *

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(5) In selecting applicants for the Scholarship Program, the [Administrator shall give priority to the applications of individuals who will be entering their final year in a course of training.] *Secretary shall—*

(A) give priority to applicants who will be entering the final year in a course of training; and

(B) ensure an equitable allocation of scholarships to persons enrolled in the second year of a program leading to an associate degree in nursing.

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PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

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CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES: PROCUREMENT AND SUPPLY

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SUBCHAPTER III—STATE HOME FACILITIES FOR FURNISHING DOMICILIARY, NURSING HOME, AND HOSPITAL CARE

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§ 5033. Authorization of appropriations

(a) There are hereby authorized to be appropriated such sums as are necessary to carry out this subchapter through September 30, [1989.] *1992.* Sums appropriated pursuant to this section shall be used for making grants to States which have submitted, and have had approved by the Administrator, applications for carrying out the purposes and meeting the requirements of this subchapter.

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SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

§ 5051. Statement of congressional purposes

It is the purpose of this subchapter to improve the quality of hospital care and other medical service provided veterans under this title, by authorizing the Administrator to enter into agreements with medical schools, [hospitals,] *health-care facilities,* and research centers throughout the country in order to receive from and share with such medical schools, [hospitals,] *health-care facilities,* and research centers the most advanced medical techniques and information, as well as certain specialized medical resources which otherwise might not be feasibly available or to effectively utilize other medical resources with the surrounding medical community, without diminution of services to veterans. Among other things, it is intended, by these means, to strengthen the medical programs at those Veterans' Administration hospitals which are located in small cities or rural areas and thus are remote from major medical centers.

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§ 5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the administrator may, when the Administrator determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in clauses (1) and (2) below, between Veterans' Administration [hospitals] *health-care facilities* and other [hospitals (or other medical installations having hospital] *health-care* facilities [or] *(including* organ banks, blood banks, or similar [institutions)] *institutions), research centers,* or medical [schools or clinics in the medical community:] *schools:*

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration health care facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

[The Administrator may determine the geographical limitations of a medical community as used in this section.]

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a [charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment.] *methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved.* Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical [appropriation.] *appropriation and to funds that have been allotted to the facility that furnished the resource involved.*

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CHAPTER 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

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SUBCHAPTER III—ASSISTANCE TO PUBLIC AND NONPROFIT INSTITUTIONS OF HIGHER LEARNING, HOSPITALS AND OTHER HEALTH MANPOWER INSTITUTIONS AFFILIATED WITH THE VETERANS' ADMINISTRATION TO INCREASE THE PRODUCTION OF PROFESSIONAL AND OTHER HEALTH PERSONNEL

5091. Declaration of purpose.
5092. Definition.
5093. Grants.
5094. Authorization of appropriations.

* * * * * * *

SUBCHAPTER III—ASSISTANCE TO PUBLIC AND NONPROFIT INSTITUTIONS OF HIGHER LEARNING, HOSPITALS AND OTHER HEALTH MANPOWER INSTITUTIONS AFFILIATED WITH THE VETERANS' ADMINISTRATION TO INCREASE THE PRODUCTION OF PROFESSIONAL AND OTHER HEALTH PERSONNEL

§ 5091. Declaration of purpose

The purpose of this subchapter is to authorize the Administrator to carry out a program of grants to provide assistance in the establishment of cooperative arrangements among universities, colleges, junior colleges, community colleges, schools of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions affiliated with the Veterans' Administration, designed to coordinate, improve, and expand the training of professional and technical allied health and paramedical personnel, and *(in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved)* to assist in developing and evaluating new health careers, interdisciplinary approaches and career advancement opportunities, so as to improve and expand allied and other health manpower utilization.

* * * * * * *

§ 5094. Authorization of appropriations

(a) There is authorized to be appropriated for the purpose of making grants under this subchapter $5,000,000 for each of fiscal years 1990 and 1991 and $6,000,000 for each of fiscal years 1992 and 1993.

(b) The sum appropriated for a fiscal year pursuant to subsection (a) of this section shall remain available until the end of the fifth fiscal year following the fiscal year for which the sum is appropriated.

(c) Of the funds appropriated for each fiscal year pursuant to the authorization in subsection (a) of this section, an amount not to exceed 10 percent of the sum so appropriated may be expended for the purpose described in section 5096(2) of this title.

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VETERANS' BENEFITS IMPROVEMENT AND HEALTH-CARE AUTHORIZATION ACT OF 1986

(Public Law 99-576, October 28, 1986)

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TITLE II—HEALTH CARE AND MEDICAL FACILITIES

PART A—HEALTH-CARE PROGRAMS

SEC. 201. RESPITE CARE.

(a) * * *

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(b) REPORT.—If the Administrator of Veterans' Affairs furnishes respite care under section 620B of title 38, United States Code (as added by subsection (a))—

(1) the Administrator shall conduct an evaluation of the health efficacy and cost-effectiveness of furnishing such care; and

(2) not later than February 1, [1989,] *1990,* shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(A) the results of such evaluation; and

(B) any plan for administrative action, and any recommendation for legislation, that the Administrator considers appropriate to include in the report.

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DEPARTMENT OF VETERANS AFFAIRS ACT

(Public Law 100-527, October 25, 1988)

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SEC. 4. ASSISTANT SECRETARIES.

(a) * * *

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(b) FUNCTIONS OF ASSISTANT SECRETARIES.—The Secretary shall assign to Assistant Secretaries such functions as the Secretary considers appropriate, including the following functions:

(1) Budgetary and financial functions.

(2) Personnel management and labor relations functions.

(3) Planning, studies, and evaluations.

(4) Management, productivity, and logistic support functions.

(5) Information management functions as required by section 3506 of title 44, United States Code.

(6) Capital facilities and real property program functions.

(7) Equal opportunity functions.

(8) Functions regarding the investigation and adjudication of complaints of employment discrimination within the Department.

(9) Functions regarding intergovernmental, public, and consumer information and affairs.

(10) Procurement functions.

(11) The review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans and the coordination and monitoring of policies facilitating access of such veterans to services and benefits provided under laws administered by the Department.

* * * * * * *

(g) Definitions.—As used in this section:

(1) The term "minority veterans" means veterans who are—

- *(A) black individuals;*
- *(B) Native Americans;*
- *(C) Hispanic-Americans;*
- *(D) Asian-Americans;*
- *(E) Pacific-Islander-Americans; and*
- *(F) women.*

(2) The term "veteran" has the meaning given that term in section 101(2) of title 38, United States Code.

(3) The term "Native American" means an Indian, a Native Hawaiian, or an Alaska Native.

(4) The term "Indian" has the meaning given that term in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a)).

(5) The term "Native Hawaiian" has the meaning given that term in section 815(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992(3)).

(6) The term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(7) The term "Asian-American" means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent of Asia.

(8) The term "Pacific-Islander-American" means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Pacific Islands.

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STEWART B. McKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT OF 1988

(Public Law 100–628, November 7, 1988)

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TITLE VIII—VETERANS PROGRAMS

SEC. 801. MEDICAL PROGRAMS.

(a) * * *

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(c) CHRONICALLY MENTALLY ILL HOMELESS VETERANS.—Of the amount appropriated pursuant to subsection (a), 50 percent shall be available for furnishing care and treatment and rehabilitative services under section [115 of the Veterans Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 501]] *620C of title 38, United States Code,* to homeless veterans who have a chronic mental illness disability. Not more than $500,000 of the amount available under the preceding sentence shall be used for the purpose of monitoring the furnishing of such care and services and, in furtherance of such purpose, maintaining in the Veterans' Administration the equivalent of 10 full-time employees.

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20-850 (592)